THE GENERAL AVIATION STANDARDS ACT OF 1989

(101-11)

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 1307

TO AMEND THE FEDERAL AVIATION ACT OF 1958 RELATING TO GENERAL AVIATION ACCIDENTS

MAY 24, 1989

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(Ex Officio)

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SUBCOMMITTEE ON AVIATION

HEARING ON H.R. 1307
GENERAL AVIATION STANDARDS ACT 1989

WEDNESDAY, MAY 24,1989
2253 RAYBURN HOUSE OFFICE BUILDING

SUMMARY OF SUBJECT MATTER

The Hearing will be on H.R. 1307, The General Aviation Standards Act of 1989, which establishes uniform federal standards for the courts to use in determining liablility in cases involving accidents of general aviation aircraft. H.R. 1307 was introduced by Congressman Glickman and has 121 co-sponsors.

H.R. 1307 is the same as H.R. 2238 which was reported by the Committee on Public Works and Transportation on May 24, 1988. That bill was also referred to the Judiciary and Energy and Commerce Committees. Neither of those committees reported the legislation and it was never considered by the House.

The Public Works and Transportation Committee's report on the bill last year concluded that the bill would place limits on excessive liability awards in general aviation accident cases, while at the same time affording fair treatment to persons injured in general aviation aircraft accidents.

The report indicated that the bill had been developed in response to a serious decline in the manufacture and sale of general aviation aircraft by United States companies. General aviation aircraft sales by United States manufacturers declined from over 17,000 units in 1979 to 1085 units in 1986. Employment in the industry declined approximately 70% during this period.

The Committee concluded that an important cause of this decline had been the tremendous increase in the industry's liability insurance costs. These liability cost increases occurred even though the industry's safety records had been improving. Members of the General Aviation Manufacturers Association reported that the amounts paid out for liability awards and settlement and legal defense costs increased from $24 million in 1977 to $76.8 million in 1983 to $210 million in 1985.

H.R. 1307 does not place any cap on the damages which can be awarded in product liability cases. However, the bill does establish uniform federal standards for liability cases, and these standards modify certain state rules of liability which produce high damage awards. The main areas dealt with by the H.R. 1307 are:

1) Joint and Several Liability. Under this doctrine, which is applied in many states, a defendent who bears some responsibility for an accident is held liable for all the damages incurred, subject to that defendents right to seek indemnification from other defendants who are also responsible. Under this doctrine a claimant can sue defendents such as manufactures who are financially responsible, in preference to suing other defendents who may be primarily responsible for the accident but have insufficent assets to pay damages.

H.R. 1307 establishes as a uniform federal standard a rule of comparative repsonsibility. Under this standard, a defendent is only responsible for the percentage of damages equivalent to the percentage of that defendent's reponsibility for the accident. As an exception to this standard, the bill provids that a general aviation manufacturer may be jointly liable for damages caused by a system which the manufacturer installed on the aircraft and that the manufacturer of a component for an aircraft may be jointly liable for damages caused by defective sub-assemblies of the component.

2. Statute of Repose. Some states have adopted a statue of repose for product liability cases. Under this concept, a manufacturer is not liable for defects which arise after a specified period of time (this is different from a statue of limitations which prohibits a plaintiff from suing after a certain period of time). The rationale for a statute of repose for general aviation aircraft is that as an aircraft gets older it is likely to have a number of owners and gone through a number of modifications and maintenance procedures. This makes it difficult to determine whether the manufacturer or some other person who used or repaired the aircraft is primarily responsible for a defect.

H.R. 1307 provides that a manufacturer would not be liable for defects discovered more than twelve years after the first sale of the aircraft. The limitation would not apply in cases where the manufacturer had given an express warranty for a longer period. The provision would not limit the manufacturer's duty to provide warnings to aircraft owners when a defect is discovered after a 12 year period.

3. State of the Art Technology. An important question in product liability cases is the extent of a manufacturer's reponsibilty to use the latest available technology to produce a safe product. H.R. 1307 provides that a general aviation aircraft manufacturer has the duty to incorporate safety featurers which are reasonably feasible according to the state of the art in engineering at the time of manufacture of a particular aircraft. This means that if new technology develops after an aircraft is first certified, a manufacturer must incorporate that technology into aircraft manufactured after the technology becomes known, even

though the Federal Aviation Administration has not directed use of the new technology. The manufacturer would not be required to incorporate the technological improvements in aircraft manufactured before the new technology became known. However, the manufacturer would have a duty to warn the purchaser of dangerous conditions which become known after the date of manufacture.

4. General Standards of Liability. Under H.R. 1307 the doctrine of strict liability applies to general aviation manufacturers. This standard goes beyond a negligence standard under which a defendant is lisble for failure to use reasonable care. Under the concept of strict liability, a general aviation aircraft manufacturer is liable, regardless of the degree of care exercised, if an aircraft is "in a defective condition unreasonably dangerous for its intended purpose". The bill also provides that manufacturers are liable if they rail to provide reasonable warnings about dangerous features of the product.

5. Affect Compliance with FAA Regulations. H.R. 1307 provides that evidence that an aircraft was designed in accordance with FAA standards is admissible on the issue of whether an aircraft is unreasonably dangerous. Compliance with FAA standards is a factor to be considered, not an absolute defense. The bill further provides that the manufacuter is not liable if the manufacturer can prove that a defective condition could have been corrected by compliance with an air worthiness directive issued by the FAA.

The main opposition to H.R. 1307 has come from trial lawyers. The Association of Trial Lawyers testified at the hearing held on the bill by the Aviation Subcommittee in 1987. (In reporting the bill the committee rejected the main arguments advanced by the trial lawyers.) Attached to this summary is a brochure prepared by the Association of Trial Lawyers of America opposing the product liability bill, followed by a rebutal to the trial lawyers brochure prepared by the General Aviation Manufacturers Association.

SECTION BY SECTION ANALYSIS

Section 1. Short Title

The short title of the Act is the "General Aviation Standards Act of 1989"

Section 2. Findings and Purposes.

The bill makes findings that: Air Transportation is an important component of the Nation's integrated transportation system; the Federal government has a direct interest in the general aviation accident liability system because the Federal government has established a comprehensive system of regulating general aviation encompassing certification of aircraft design and construction, standards for required maintenance, licensing those who perform maintenance, standards for training and licensing

pilots, regulation of air traffic, accident investigation, and other functions to assure a safe air transportation system; this Federal system is the exclusive legal authority for regulating aviation operations and safety; increasing liability costs and lack of available insurance are forcing manufacturers of aircraft and component parts to limit or cease production of some aircraft models; the accident rate for general aviation has declined yet damages sought in general aviation liability claims against manufacturers continue to rise bearing no relationship to the quality of the aircraft manufactured and in use; it is in the national interest to reduce unnecessary costs related to general aviation accident liability claims while ensuring efficient compensation for injured parties; and Federal reform of the general aviation accident liability system will result in the maintenance of airworthy aircraft and a more rational general aviation accident liability system.

The purpose of this Act is to establish rules of Federal law for determining personal injury and property damage arising out of general aviation accidents.

Section 3. Amendment of Federal Aviation Act of 1958.

Section 3(a). Title VII Of the Federal Aviation Act of 1958 (relating to aviation accident investigation) is amended by adding the following new subtitle:

"Subtitle B-General Aviation Accidents"

Section 721. Applicability

The Act is applicable to any action for harm arising out of a general aviation accident against a general aviation manufacturer, the owner or operator of a general aviation aircraft, anyone who repairs, maintains or supports a general aviation aircraft or any other person or government entity. The Act does not apply to actions against manufacturers, owners or operators or persons who repair or support aircraft that are not general aviation aircraft.

Section 722. Liability for General Aviation Accidents

This section establishes uniform rules of liability and defenses and apportion the burden of proof.

Section 722(a). Liability for Negligence. This section provides that a person harmed by another party's negligence, in a general aviation accident, may bring an action and recover damages from that party, if the negligence of that party is a proximate cause of the claimant's harm. Harm, which is a defined term, includes bodily injury and property damage.

Section 722(b). Product Liability of General Aviation Manufacturers.

Section 722(b)(1). This subsection provides a special rule of liability (strict liability) for manufacturing and defect claims brought against general aviation manufacturers. A manufacturer is liable for harm if, when the product left the manufacuter's control, it was in a defective condition unreasonably dangerous for its intended purpose. The determination of what is a defective condition must be judged against the engineering and manufacturing practices that were reasonably feasible in light of existent technology on the date the product left the control of the manufacturer. The claimant must also show that the defective condition caused his harm and that he was using the general aviation aircraft for the purposes and in the manner for which it was designed and manufacturerd.

Section 722(b)(2). This subsection provides that a general aviation manufacturer is liable for injuries arising out of a general aviation accident for failing to provide appropriate warnings or instructions about a danger connected with its product that he knew or should have known about it. A manufacturer also has a duty to provide warnings regarding its products after their distribution or sale.

Section 722(b)(3). A manufacturer is also liable for injuries arising out of a general aviation accident caused by the breach of his express warranty.

Section 722(c). This subsection provides a defense to a manufacturer for strict liability actions governed by Section 722(b) if the manufacturer proves, by a proponderance of the evidence, that the defective condition could have been corrected by compliance with an airworthiness directive issued by the FAA that was issued a reasonable period before the accident and after the product left control of the manufacturer.

Section 722(d). This subsection provides that evidence of compliance with standards, conditions, or specifications established, adopted, or approved by the FAA, shall be admissible with regard to whether the product was defective and unreasonably dangerous for its intended purpose.

Section 723. Comparative Responsibility.

This section requires that the principles of comparative responsibility govern actions for damages. The trier of fact (in most cases, the jury) will determine comparative responsibility by indicating the percentage of total responsibility for the claimant's harm attributable to the claimant's conduct, each defendant, each third-party defendant, and any other person not a party to the action. Each person's liability is based on, and limited to, that person's proportionate share of responsibility for the damages. In addition to his individual liability, an aircraft manufacturer is also jointly liable for harm caused by a defective system, component, subassembly, or other part that it did not manufacture but that it incorporated in its aircraft. A general aviation manufacturer who is jointly liable with another person has a right indemnity or contribution against that person.

Section 724. Time Limitation on Liability.

This section establishes a time limitation on liability for harm which occurs more than 12 years from the date of the delivery of the aircraft. For a replacement part of an aircraft or a part which was added to the aircraft, the time limit is 12 years from the date of the replacement or addition. This time limit on liability does not apply to an express written warranty that the product was suitable for a period of more than 12 years. In addition, this time limit on liability does not alter the continuing duty to provide aircraft owners and repair facilities with additional or modified warning or instructions regarding the use or maintenance of an aircraft.

Section 725. Subsequent Remedial Measures.

This section provides that evidence of any repairs or changes made to the product after an accident which, if made before the accident, would have made the accident less likely to occur, is not admissible to prove liability. Such evidence is admissible to the extent permitted under Rule 407 of the Federal Rules of Evidence.

Section 726. Admissibility of Cetain Evidence.

This section provides that evidence of tax liability attributable to past or future income alleged to have been lost is admissible.

Section 727. Punitive Damages

This section provides the standard for recovery of punitive damages. Under this section, punitive damages may be awarded in an action only if the claimant establishes by clear and convincing evidence that the harm suffered was the direct result of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by the use of a general aviation product. Evidence regarding the financial worth or profits of a defendant, relating solely to a claimant for punitive damages, is not admissible unless the claimant establishes that there is a prima facie case for an award of punitive damages.

Section 728. Time Limitation on Bringing Certain Actions

This section provides a two year statute of limitations for general aviation accident claims and the summons and complaint must be served upon a defendant within 120 days after the filing of the complaint. However, the claimant may show why such service could not be made within that 120-day period.

Section 729. Jurisdiction and Venue

This section provides that the United States District Courts shall, concurrently with State courts, have original jurisdiction, without regard to the amount in controversy, in all civil actions for indemnity or contribution authorized in such action. In addition, this section authorizes any defendant to remove a civil action from a State court to the appropriate district court without any other party's consent. This section also provides that in the case of removal, the district court has the additional jurisdiction to determine all substantially similar state claims arising out of the same general aviation accident.

Section 729. This section establishes the places where a civil action for damages arising out of a general aviation accident may be brought as the district where the accident occurred, or the district where a plaintiff or defendant resides. This section also provides that a district court may transfer a general aviation accident action to any other district for the convenience of the parties and witnesses, in the interest of justice.

Section 730. Preemption

This section provides that the rules of liability set forth in this bill supersede State laws covering the same subject matter and provides that this bill does not supersede, waive or affect any defense of sovereign immunity asserted by the United States or any State. Furthermore, this bill does not affect the provisions of any applicable worker's compensation law.

Section 731. Sanctions

This section specifically invokes sanction for violation of Rule 11 of the Federal Rules of Civil Procedure and directs that Rule 11 be strictly enforced. Rule 11 provides sanctions against a party, his attorney or both for filing frivolous or legally or factualy unfounded complaints or motions. This provision applies to both plaintiffs and defendants.

Section 732. Definitions

This section establishes definitions for various terms which are stated below, as in the bill.

The term "claimant" means any person who brings an action subject to this subtitle, and any person on whose behalf such action is brought, including (A) the claimant's decedent, and (B) the claimant's parent or guardian, if the action is brought through or on behalf of a minor or incompentent.

The term "general aviation accident" means any accident which arises out of the operation of any general aviation aircraft and which results in harm.

The term "general aviation aircraft" means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator, which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than 20 passengers, and which is not, at the time of the accident, engaged in scheduled passenger carrying operations as defined in regulations issued under this Act.

The term "general aviation manufacturer" means: (A) the builder or manufacturer of the airframe of a general aviation aircraft; (B) the manufacturer of the engine of a general aviation aircraft; and (C) the manufacturer of any system, component, subassembly, or other part of a general aviation aircraft.

The term "harm" means (A) property damage or bodily injury sustained by a person, (B) death resulting from such bodily injury, (C) pain and suffering which is caused by such bodily injury, and (D) emotional harm (including bereavement and loss of affection, care, or society) which is caused by such bodily injury.

The term " product" means a general aviation aircraft and any system, component, subassembly, or other part of a general aviation aircraft.

The term "property damage" means physical injury to tangible property, including loss of use of tangible property.

Section 3(b). Technical Amendments. This section changes the Federal Aviation Act of 1958 by providing a new title designation for Title VII of the Act and a new table of contents.

Section 4. Severability

This section provides that if anything in this Act is held invalid the remainder shall not be affected by that invalidation.

Section 5(a). Effective Date

Section 5(a). This Act applies to actions filed on or after its date of enactment.

Section 5(b). Provides that, for actions filed before or within 180 days after enactment, liberal leave will be given to amend any pleading, motion, or other matter to conform to the amendments made by this Act. This provision is intendedd to assure that attorneys will be given the opportunity to amend complaints, motions, etc. to conform to the substantive provisions of law established.

Section 6. Financial Responsibility

Directs the Secretary of Transportation to conduct a study to determine whether persons awarded damages from general aviation aircraft owners, operators and mechanics are unable to collect any or all damages. The study with recommendations shall be completed in one year.

101ST CONGRESS
1ST SESSION

H. R. 1307

To amend the Federal Aviation Act of 1958 relating to general aviation accidents.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 1989

Mr. GLICKMAN (for himself, Mr. ANDERSON, Mr. MINETA, Mr. FISH, Mr. GINGRICH, Mr. LEHMAN of Florida, Mr. CARR, Mr. FRANK, Mr. BARTON of Texas, Mr. BEREUTER, Mr. BILIRAKIS, Mr. BOEHLERT, Mr. BOUCHER, Mr. BROWN of California, Mrs. BYRON, Mr. CLINGER, Mr. COBLE, Mr. CRAIG, Mr. DANNEMEYER, Mr. DAVIS, Mr. DE LUGO, Mr. DERRICK, Mr. DICKINSON, Mr. DYMALLY, Mr. FASCELL, Mr. FRENZEL, Mr. GEKAS, Mr. HAYES of Illinois, Mr. DORGAN of North Dakota, Mr. HEFLEY, Mr. HEFNER, Mr. HENRY, Mr. HOUGHTON, Mr. INHOFE, Mrs. JOHNSON of Connecticut, Mr. KOLTER, Mr. LEWIS of Florida, Mr. LIGHTFOOT, Mr. LIPINSKI, Mr. MARTIN of New York, Mrs. MARTIN of Illinois, Mr. MCCANDLESS, Mr. MCCURDY, Mrs. MEYERS of Kansas, Mrs. MORELLA, Mr. PARRIS, Mr. PEASE, Mr. PENNY, Mr. PETRI, Mr. RHODES, Mr. RITTER, Mr. ROBERTS, Mr. ROBINSON, Mr. ROE, Ms. SCHNEIDER, Mr. SKEEN, Mr. SLATTERY, Mr. DENNY SMITH, Mr. SMITH of Texas, Mr. SMITH of New Hampshire, Mr. SPRATT, Mr. STANGELAND, Mr. STUMP, Mr. SWIFT, Mr. TAUKE, Mr. VANDER JAGT, Mr. VOLKMER, Mr. WHITTAKER, Mr. CHANDLER, Mr. NIELSON of Utah, Mr. STENHOLM, Mr. GALLEGLY, and Mr. HAYES of Louisiana) introduced the following bill; which was referred jointly to the Committees on Public Works and Transportation, the Judiciary, and Energy and Commerce

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A BILL

To amend the Federal Aviation Act of 1958 relating to general aviation accidents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "General Aviation Standards Act of 1989".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) transportation by air of passengers continues to comprise an increasingly important component of the Nation's overall transportation system;

(2) the Federal Government has an interest in the general aviation accident liability system because the Federal Government has established a comprehensive system for regulating general aviation, including—

(A) establishing standards for design, construction, and certification of general aviation aircraft,

(B) establishing standards for maintenance of aircraft, licensing of repair facilities, and licensing of persons who may perform or approve maintenance, repairs, and inspections,

(C) establishing standards for training and licensing of pilots,

(D) establishing a comprehensive air control system,

(E) conducting investigations to determine the probable cause of aviation accidents and prevent future accidents, and

(F) conducting other activities necessary to assure a safe air transportation system,

and this Federal system is the exclusive legal authority for regulating aviation operations and safety;

(3) competent general aviation manufacturers and component part manufacturers are ceasing or limiting production of general aviation aircraft or some models of such aircraft because of the increasing costs and unavailability of product liability insurance;

(4) although the incidence of injuries to passengers in general aviation accidents has decreased, the amount of damages sought in general aviation accident liability claims against general aviation aircraft manufacturers is increasing at disproportionate rates, beyond any relationship to the quality of the aircraft manufactured and in use;

(5) it is in the national interest to reduce unnecessary expenditures related to general aviation accident liability claims while providing more rapid and more efficient compensation for individuals harmed in general aviation accidents; and

(6) Federal action to reform the general aviation accident liability system will result in—

(A) the maintenance of airworthy general aviation aircraft; and

(B) a more rational general aviation accident liability system.

(b) PURPOSE.—It is the purpose of this Act to establish rules of Federal law for determining personal injury and property damage arising out of general aviation accidents.

SEC. 3. AMENDMENT OF FEDERAL AVIATION ACT OF 1958.

(a) IN GENERAL.—Title VII of the Federal Aviation Act of 1958 (relating to aviation accident investigations) is amended by adding at the end the following new subtitle:

"Subtitle B—General Aviation Accidents

"SEC. 721. APPLICABILITY.

"(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this subtitle shall apply to any action for damages for harm arising out of a general aviation accident brought against a general aviation manufacturer, the owner or operator of a general aviation aircraft, a person who repairs, maintains, or provides any other support for a general aviation aircraft, or any other person or governmental entity.

"(b) EXCEPTION.—The provisions of this subtitle shall not apply with respect to an action brought by a person

against a manufacturer, owner, or operator of an aircraft that is not a general aviation aircraft or any person who repairs, maintains, or provides any other support for an aircraft that is not a general aviation aircraft.

"SEC. 722. LIABILITY FOR GENERAL AVIATION ACCIDENTS.

"(a) LIABILITY FOR NEGLIGENCE.—Any person claiming damages for harm arising out of a general aviation accident may bring an action for damages against a party and may recover damages from that party if that party was negligent and such negligence is a proximate cause of the claimant's harm.

"(b) PRODUCT LIABILITY OF GENERAL AVIATION MANUFACTURERS.—

"(1) ACTIONS FOR DEFECTIVE PRODUCTS.—Any person claiming damages for harm arising out of a general aviation accident may bring an action for damages against a general aviation manufacturer of a product and may recover damages from that general aviation manufacturer if—

"(A) the product, when it left the control of the manufacturer, was in a defective condition unreasonably dangerous for its intended purpose, according to engineering and manufacturing practices which were reasonably feasible;

"(B) the defective condition is a proximate cause of the claimant's harm; and

"(C) the general aviation aircraft was being used at the time of the accident for a purpose and in a manner for which it was designed and manufactured.

"(2) ACTIONS FOR FAILURE TO PROVIDE ADEQUATE WARNINGS OR INSTRUCTIONS.—Any person claiming damages for harm arising out of a general aviation accident may bring an action for damages against a general aviation manufacturer of a product and may recover damages from that general aviation manufacturer if—

"(A) at the time the product left the control of the manufacturer, the manufacturer—

"(i) knew, or in the exercise of reasonable care should have known, about a danger connected with the product that caused the claimant's harm; and

"(ii) failed to provide the warnings or instructions that a person exercising reasonable care would have provided with respect to the danger which caused the harm alleged by the claimant, unless those warnings or instructions, if provided, would not have mate-

rially affected the conduct of the product user; or

"(B) after the product left the control of the general aviation manufacturer, the manufacturer—

"(i) knew, or in the exercise of reasonable care should have known, about the danger which caused the claimant's harm; and

"(ii) failed to take reasonable steps to provide warnings or instructions, after the manufacture of the product, which would have been provided by a person exercising reasonable care, unless those warnings or instructions, if provided, would not have materially affected the conduct of the product user;

and the failure to provide warnings or instructions described in subparagraph (A) or (B) is a proximate cause of the claimant's harm.

"(3) ACTIONS FOR FAILURE TO CONFORM TO EXPRESS WARRANTY.—Any person claiming damages for harm arising out of a general aviation accident may bring an action for damages against a general aviation

manufacturer of a product and may recover damages from that general aviation manufacturer if—

"(A) the manufacturer made an express warranty with respect to the product;

"(B) the warranty relates to that aspect of the product which caused the harm;

"(C) the product failed to conform to the warranty; and

"(D) the failure of the product to conform to the warranty is a proximate cause of the claimant's harm.

"(c) BURDEN OF PROOF.—In an action governed by subsection (b) of this section, a general aviation manufacturer shall not be liable if such manufacturer proves, by a preponderance of the evidence, that—

"(1) the defective condition could have been corrected by compliance with action described in an airworthiness directive issued by the Administrator; and

"(2) such directive was issued at a reasonable time before the date of the accident and after the product left the control of the general aviation manufacturer.

"(d) ADMISSIBILITY OF COMPLIANCE WITH STANDARDS.—In any action governed by subsection (b) of this section, evidence of compliance with standards, conditions, or

specifications established, adopted, or approved by the Federal Aviation Administration shall be admissible with regard to whether the product was defective and unreasonably dangerous for its intended purpose.

"SEC. 723. COMPARATIVE RESPONSIBILITY.

"(a) ACTIONS GOVERNED BY COMPARATIVE RESPONSIBILITY.—All actions governed by this subtitle shall be governed by the principles of comparative responsibility. Comparative responsibility attributed to the claimant's conduct shall not bar recovery in such an action, but shall reduce any damages awarded to the claimant in an amount proportionate to the responsibility of the claimant. The trier of fact shall determine comparative responsibility by making findings indicating the percentage of total responsibility for the claimant's harm attributable to the claimant, each defendant, each third-party defendant, and any other person not a party to the action.

"(b) DEFENDANTS SEVERALLY LIABLE.—Except as provided in subsection (c), a defendant is severally but not jointly liable in an action governed by this subtitle, and the liability of any defendant in any such action shall be determined on the basis of that defendant's proportionate share of responsibility for the claimant's damages.

"(c) LIABILITY OF CERTAIN MANUFACTURERS.—In an action governed by this subtitle—

"(1) a general aviation manufacturer who is the builder or manufacturer of the airframe of the general aviation aircraft involved is jointly and severally liable for damages for harm caused by a defective system, component, subassembly, or other part of that aircraft that the manufacturer installed or certified as part of the original type design for that aircraft; and

"(2) a general aviation manufacturer who is the manufacturer of a system or component of the general aviation aircraft involved is jointly and severally liable for damages for harm caused by a defective subassembly or other part of that system or component.

"(d) RIGHT OF INDEMNITY AND CONTRIBUTION.—A general aviation manufacturer and any other person jointly liable under subsection (c) shall have the right to bring an action for indemnity or contribution against any person with whom they are jointly liable under subsection (c).

"SEC. 724. TIME LIMITATION ON LIABILITY.

"(a) IN GENERAL.—No civil action for damages for harm arising out of a general aviation accident which is brought against a general aviation manufacturer may be brought for harm which is alleged to have been caused by an aircraft or a system, component, subassembly, or other part of an aircraft and which occurs more than—

"(1) 12 years from—

"(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer, or

"(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such an aircraft; or

"(2) with respect to any system, component, subassembly, or other part which replaced another product in, or which was added to, the aircraft, and which is alleged to have caused the claimant's harm, 12 years from the date of the replacement or addition.

"(b) EXCEPTION IN CASE OF EXPRESS WARRANTY.—Subsection (a) does not apply in the case of harm to a claimant which occurs after the period set forth in subsection (a) if the general aviation manufacturer or the seller of the product that caused the claimant's harm gave an express warranty that the product would be suitable, for the purpose for which it was intended, for a longer period of time.

"(c) DUTY TO PROVIDE ADDITIONAL WARNINGS NOT AFFECTED.—Nothing in this section shall be construed to affect a person's duty to provide, after the sale or lease of an aircraft, to aircraft owners, and to repair facilities to which a license or certificate to perform repairs has been issued by the Administrator, additional or modified warnings or instructions regarding the use or maintenance of that aircraft or any

system, component, subassembly, or other part of that aircraft.

"SEC. 725. SUBSEQUENT REMEDIAL MEASURES.

"In an action governed by this subtitle, evidence of any measure taken after an event which, if taken previously, would have made the event less likely to occur is not admissible to prove liability. Such evidence is admissible to the extent permitted under Rule 407 of the Federal Rules of Evidence.

"SEC. 726. ADMISSIBILITY OF CERTAIN EVIDENCE.

"In an action governed by this subtitle, evidence of Federal, State, or local income tax liability or any social security or other payroll tax liability attributable to past or future earnings, support, or profits and the present value of future earnings, support, or profits alleged to have been lost or diminished because of harm arising out of a general aviation accident, is admissible regarding proof of the claimant's damages.

"SEC. 727. PUNITIVE DAMAGES.

"(a) BASIS FOR RECOVERY.—Punitive damages may be awarded in an action governed by this subtitle only if the claimant establishes by clear and convincing evidence that the harm suffered was the direct result of conduct manifesting a conscious and flagrant indifference to the safety of those

persons who might be harmed by use of the general aviation aircraft involved.

"(b) ADMISSIBILITY OF EVIDENCE ON CLAIM FOR PUNITIVE DAMAGES.—Evidence regarding the financial worth of a defendant or the defendant's profits or any other financial evidence relating solely to a claim for punitive damages under this subtitle is not admissible unless the claimant establishes, before any such evidence is offered, that the claimant can present evidence that will establish prima facie proof of conduct manifesting a conscious and flagrant indifference to the safety of those persons who might be harmed by use of the general aviation aircraft involved.

"SEC. 728. TIME LIMITATION ON BRINGING CERTAIN ACTIONS.

"An action governed by this subtitle shall be barred, notwithstanding any State law, unless—

"(1) the complaint is filed within 2 years after the date on which the accident occurred which caused the claimant's harm; and

"(2) the summons and complaint are properly served upon the defendant within 120 days after the filing of the complaint, unless the party on whose behalf such service is required can show good cause why such service was not made within that 120-day period.

Paragraph (2) shall not apply to service of process in a foreign country pursuant to Rule 4(i) of the Federal Rules of Civil Procedure or any similar State law.

"SEC. 729. JURISDICTION AND VENUE.

"(a) IN GENERAL.—The district courts of the United States, concurrently with the State courts, shall have original jurisdiction, without regard to the amount in controversy, in all actions governed by section 722 and in all actions for indemnity or contribution described in section 723(d) of this subtitle.

"(b) REMOVAL OF STATE ACTIONS.—A civil action which is brought in a State court may be removed to the district court of the United States for the district embracing the place where the action is pending, without the consent of any other party and without regard to the amount in controversy, by any defendant against whom a claim in the action is asserted for damages for harm arising out of a general aviation accident.

"(c) DETERMINATION OF PENDENT CLAIMS UNDER STATE LAW.—In any case commenced in or removed to a district court under subsection (a) or (b), the court shall have jurisdiction to determine all claims under State law that arise out of the same general aviation accident if a substantial question of fact is common to the claims under State law and to the Federal claim, defense, or counterclaim.

"(d) VENUE.—

"(1) IN GENERAL.—A civil action in which the district courts have jurisdiction under subsection (a) may be brought only in a district in which—

"(A) the accident giving rise to the claim occurred; or

"(B) any plaintiff or defendant resides.

"(2) TRANSFER OF ACTIONS.—In an action pending in a district court under paragraph (1), a district court may, on motion of any party or its own motion, transfer the action to any other district for the convenience of parties and witnesses in the interest of justice.

"(3) RESIDENCE DEFINED.—For purposes of this subsection, a corporation shall be considered to be a resident of any State in which it is incorporated or licensed to do business or is doing business.

"SEC. 730. PREEMPTION.

"(a) IN GENERAL.—This subtitle supersedes any State law regarding recovery, under any legal theory, of damages for harm arising out of a general aviation accident, to the extent that this subtitle establishes a rule of law or procedure applicable to the claim.

"(b) NO EFFECT ON SOVEREIGN IMMUNITY.—Nothing in this subtitle shall be construed to supersede or to waive or

affect any defense of sovereign immunity asserted by the United States or any State.

"(c) WORKERS' COMPENSATION LAWS.—No right of action for damages for harm exists under this subtitle if that right would be inconsistent with any applicable workers' compensation law.

"SEC. 731. SANCTIONS.

"It is the intent of Congress that, with respect to civil actions governed by this subtitle, the sanctions for violation of Rule 11 of the Federal Rules of Civil Procedure, including orders to pay to the other party or parties the amount of their reasonable expenses, including a reasonable attorney's fee, be strictly enforced.

"SEC. 732. DEFINITIONS.

"As used in this subtitle—

"(1) the term 'claimant' means any person who brings an action subject to this subtitle, and any person on whose behalf such an action is brought, including—

"(A) the claimant's decedent, and

"(B) the claimant's parent or guardian, if the action is brought through or on behalf of a minor or incompetent;

"(2) the term 'general aviation accident' means any accident which arises out of the operation of any general aviation aircraft and which results in harm;

"(3) the term 'general aviation aircraft' means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator, which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than 20 passengers, and which is not, at the time of the accident, engaged in scheduled passenger carrying operations as defined in regulations issued under this Act;

"(4) the term 'general aviation manufacturer' means—

"(A) the builder or manufacturer of the airframe of a general aviation aircraft;

"(B) the manufacturer of the engine of a general aviation aircraft; and

"(C) the manufacturer of any system, component, subassembly, or other part of a general aviation aircraft;

"(5) the term 'harm' means—

"(A) property damage or bodily injury sustained by a person,

"(B) death resulting from such bodily injury,

"(C) pain and suffering which is caused by such bodily injury, and

"(D) emotional harm (including bereavement and loss of affection, care, or society) which is caused by such bodily injury;

"(6) the term 'product' means a general aviation aircraft and any system, component, subassembly, or other part of a general aviation aircraft; and

"(7) the term 'property damage' means physical injury to tangible property, including loss of use of tangible property.".

(b) TECHNICAL AMENDMENTS.—(1) Title VII of the Federal Aviation Act of 1958 is amended by striking the title designation and inserting in lieu thereof the following:

"TITLE VIII—AIRCRAFT ACCIDENTS

"Subtitle A—Investigations".

(2) The table of contents in the first section of the Federal Aviation Act of 1958 is amended by striking—

"TITLE VII—AIRCRAFT ACCIDENT INVESTIGATION"

and inserting in lieu thereof

"TITLE VII—AIRCRAFT ACCIDENTS

"Subtitle A—Investigations".

(3) Such table of contents is amended by adding at the end of the portion relating to title VII the following:

"Subtitle B—General Aviation Accidents

"Sec. 721. Applicability.
"Sec. 722. Liability for general aviation accidents.
"(a) Liability of certain parties for negligence.
"(b) Product liability of general aviation manufacturers.

"(c) Burden of proof.
"(d) Admissibility of compliance with standards.
"Sec. 723. Comparative responsibility.
"(a) Actions governed by comparative responsibility.
"(b) Defendants severally liable.
"(c) Liability of certain manufacturers.
"(d) Right of indemnity and contribution.
"Sec. 724. Time limitation on liability.
"(a) In general.
"(b) Exception in case of express warranty.
"(c) Duty to provide additional warnings not affected.
"Sec. 725. Subsequent remedial measures.
"Sec. 726. Admissibility of certain evidence.
"Sec. 727. Punitive damages.
"(a) Basis for recovery.
"(b) Admissibility of evidence on claim for punitive damages.
"Sec. 728. Time limitation on bringing certain actions.
"Sec. 729. Jurisdiction and venue.
"(a) In general.
"(b) Removal of State actions.
"(c) Determination of pendent claims under State law.
"(d) Venue.
"Sec. 730. Preemption.
"(a) In general.
"(b) No effect on sovereign immunity.
"(c) Workers' compensation laws.
"Sec. 731. Sanctions.
"Sec. 732. Definitions.".

SEC. 4. SEVERABILITY.

If any provision of this Act or the amendments made by this Act or the application of the provision to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of the provision to any other person or circumstance shall not be affected by that invalidation.

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall apply to any civil action governed by subtitle B of title VII of the Federal Aviation Act of 1958 which is filed on or after the date of the enactment of this Act.

(b) LEAVE TO AMEND.—If an action governed by subtitle B of title VII of the Federal Aviation Act of 1958 is filed within 180 days after the date of the enactment of this Act, liberal leave shall be given to a party to amend any pleading, motion, statement of jurisdiction or venue, or other matter to conform to the amendments made by this Act.

SEC. 6. FINANCIAL RESPONSIBILITY FOR GENERAL AVIATION ACCIDENTS.

(a) STUDY.—The Secretary of Transportation shall conduct a study for the purpose of determining (1) whether or not persons awarded damages from owners and operators of, and mechanics for, general aviation aircraft as a result of general aviation accidents involving such aircraft are unable to collect all or any portion of such damages, and (2) the relative amount of such uncollectible damages.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall report to Congress on the results of the study conducted under subsection (a) together with recommendations.

(c) DEFINITIONS.—As used in this section, the terms "general aviation accident" and "general aviation aircraft" have the meanings such terms have under section 732 of the Federal Aviation Act of 1958.

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THE GENERAL AVIATION STANDARDS ACT OF 1989

WEDNESDAY, MAY 24, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:10 a.m., in Room 2247, Rayburn House Office Building, Hon. James L. Oberstar, Chairman of the Subcommittee, presiding.

Mr. OBERSTAR. The Subcommittee on Aviation will come to order.

In our hearing today the Subcommittee will be considering legislation to establish uniform rules for aviation accident cases involving general aviation aircraft.

Our focus is H.R. 1307, which is identical to the bill reported by the Committee on Public Works and Transportation last year.

H.R. 1307 has been introduced by our colleague, Congressman Dan Glickman, of Kansas, and 121 of our colleagues who have cosponsored the legislation.

H.R. 1307 was developed in response to a serious, in fact some might say alarming decline in the manufacturing and sales of general aviation aircraft by U.S. companies.

Sales of domestic aircraft declined from almost 18,000 in 1978, to just 1,143 units in 1988. That disastrous a decline in any industry would be called a depression. Certainly it has been for the general aviation manufacturing industry itself.

Employment by U.S. general aviation manufacturers has commensurately dropped by some 65 percent in that same period of time.

The decline in sales has been accompanied by a tremendous increase in the industry's liability insurance costs. Amounts paid by general aviation manufacturers for liability awards and the costs of settlement in defense increased from $24 million in 1977, to over $200 million in 1987.

The liability insurance crisis issue was first enjoined by the Subcommittee on Investigations and Oversight a few years ago, then Mr. Gingrich, the ranking member, and I conducted a very extensive inquiry into this whole issue, and in fact, we are the first Committee on the House side to inquire into the general issue of liability insurance costs and their disproportionate rise as compared to other sectors of the national economy.

And I think the classic documentation of that issue is the Committee's hearing and report on the subject and I commend it to

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those who are concerned about the issue, and will not belabor the points that we raised. But I think it is very instructive as background for the hearing and the action we intend to take on this legislation.

H.R. 1307 is designed to put reasonable limits on the liability exposure of manufacturers. It is important to understand that the legislation does not impose caps on the amount of damages that may be awarded.

Instead, the bill deals with the damages issue by establishing uniform Federal standards for joint and several liability. It establishes a statute of repose on a uniform basis for the country and a uniform standard for the duty of a manufacturer to design aircraft in accordance with the state of the art in technology.

H.R. 1307 would modify some of the standards that have been applied by State courts producing a very high liability exposure for general aviation manufacturers.

H.R. 1307 raises some important issues that the Committee will have to give very, very careful consideration to. One of these is the relationship between the recent decline in sales of general aviation aircraft and the increases in liability insurance costs.

We have to determine whether a change in liability standards is likely to increase industry sales, or whether the industry's problems are broader and more significant and need to be addressed in other ways.

Another basic issue is the role of Government regulation by the Federal Aviation Administration on the one hand, and product liability cases on the other in offering incentives for manufacturers to develop the safest possible product.

Should safety be promoted primarily by FAA regulation? Or should product liability cases also play an important role? Would the standards established by H.R. 1307 detract in any way from aviation safety?

To these and many other questions we will be seeking answers and we look forward to today's testimony from our colleague, Mr. Glickman, and from representatives of the manufacturers as well as the users of general aviation products.

We look forward to some very interesting insights and a very lively exchange on all aspects of this very, very important subject of product liability.

The Chair recognizes the gentleman from Pennsylvania, Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman. I would like to place in the record at this point the statement of the Honorable John Paul Hammerschmidt, ranking member of the Full Committee on Public Works and Transportation.

Mr. OBERSTAR. Without objection, so ordered.

[Mr. Hammerschmidt's statement follows:]

STATEMENT OF HON. JOHN PAUL HAMMERSCHMIDT

Mr. Chairman: The general aviation manufacturing industry has been in a serious recession for several years now. Although there have been some signs of improvement recently, deliveries of small planes are still well below their levels of a decade ago.

There are probably many reasons for these troubles. But one of the main reasons seems to be that product liability costs have increased dramatically. This has oc-

curred at a time when accident statistics indicate that general aviation aircraft are actually becoming safer.

These rising liability costs have forced manufacturers and suppliers to lay off many workers. Some companies have stopped making small planes altogether. Others operate without insurance.

Small planes that are still being made certainly must be more expensive, reflecting the higher insurance premiums. In all likelihood, this is pricing many private pilots out of the new aircraft market.

The bill before us now (H.R. 1307) attempts to reform the product liability system to address these problems. The bill would establish Federal court jurisdiction over general aviation product liability cases. It would allocate damages based on the comparative responsibility of each defendant. It would allow aircraft manufacturers to raise the so-called "state of the art" and "product misuse" defenses that are now often precluded by the State law.

On the other hand, the bill does not place a limit on the damages that an injured person can receive nor on the fees that an attorney can collect. It also continues to allow an injured party to sue using the legal doctrine of strict liability. As such, it could be argued that this bill actually represents a more moderate approach than others that have been suggested in this area.

Nevertheless, I recognize that some, particularly members of the legal profession, have objections to this sort of legislation. I am very sensitive to their concerns. They work very closely with the issues raised by product liability reform efforts.

Therefore, I intend to carefully review the testimony of our witnesses here today. I look forward to this subcommittee's thorough consideration of H.R. 1307.

Thank you, Mr. Chairman.

Mr. CLINGER. Mr. Chairman, in the history of American history, no sector has suffered such a dramatic decline of business as has general aviation. Their troubles are a result of a number of factors, not the least of which is the crisis in product liability.

Ironically, the accident record for general aviation has improved over the years, despite the debate that has ensued endlessly it seems over this issue.

And yet, manufacturers continue to face higher and higher liability costs for a fleet of aircraft they manufactured over the previous two or three decades.

The only hope they have of recouping their losses is through higher sales prices of new aircraft, which obviously depresses the market even further.

Today we are in a peculiar situation where the cost of a new airplane includes a premium that may be equal to or exceed the actual cost of construction.

Liability costs coupled with other factors have driven the General Motors and Ford of general aviation aircraft out of the market altogether.

Ten years ago, it would have been absurd to suggest that Cessna and Piper would voluntarily remove themselves from the production of single engine piston aircraft.

I do not hold or believe that the tort system is singularly responsible for the demise of domestic general aviation aircraft production, but I do believe it is the single largest obstacle now burdening the market.

And I have the personal experience in this regard in that I represent Lock Haven, Pennsylvania, the former home of Piper Aircraft, which some years ago consolidated all of its operations in the State of Florida leaving a large manufacturing facility empty in Lock Haven.

There have been several attempts made to restart aircraft manufacture in that facility, most recently a gentleman who wanted to

start making the Taylor Cub again, a single engine piston aircraft, but found that as he got into it that the liability threat hanging over his head was just so enormous that he finally had to desist doing business. So it was another example of how this has really inhibited the growth of competition and indeed the survival of this industry.

Holding manufacturers accountable for planes built 20 or 30 years ago has had the twisted effect of keeping domestic productions severely depressed, while allowing foreign entrants into the market to put them in a highly advantaged position since they bear no responsibility, an hence no liability, for planes sold in years past.

Our colleague, Dan Glickman, has introduced a very fair and balanced bill that brings some sense of reason into the tort system by establishing uniform standards for product liability awards.

His approach would help bring a degree of reasonableness into the tort system, all the while, I believe, fully protecting the rights of plaintiffs.

So, I look forward to receiving this morning's testimony, and would welcome our friend, Mr. Glickman, before our panel.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman.

I would add that I have driven through Lock Haven and can personally testify to the devastating economic consequences of closure of a major facility. I also drove through that community on my way north to my in-laws in upstate New York in the days when it was bustling and productive and the changes are traumatic.

Are there other opening statements?

Mr. Inhofe?

Mr. INHOFE. Mr. Chairman, I do not have a prepared statement, but just a brief comment. Back in the real world, before Congress, I was in general aviation and I saw this coming and I really applaud Congressman Glickman for getting involved in it.

We are from a part of the Country that is well known for a number of things; one is called "tornado alley" the other is we are kind of the general aviation belt of America out there where general aviation is just about as common as automobile ownership.

I think the crisis that we are facing, that general aviation is facing, goes beyond this. This is a great start. It is not just product liability. It is liability in itself. The cost that is there is resulting in many people not even buying the coverage and flying around without it, and I am talking about responsible people.

It is a very serious problem. We are seeing now a demise in the manufacture of training aircraft, something that I have been involved in for quite some time. They are now trying to fix up old aircraft. However, I heard just the other day one of the major flying training centers in Oklahoma in my district, Oklahoma State University, that use to have a fleet of 150's and 152's, is down now to one aircraft.

So I think it is a matter of survival of an industry and this is a great place to start and I applaud Congressman Glickman's efforts here and I look forward to the passage of this legislation.

Mr. OBERSTAR. The gentleman from Missouri, do you wish to be heard?

Mr. HANCOCK. Thank you, Mr. Chairman.

I am going to read this into the record because it is something, as usual, that I am very interested in.

Mr. OBERSTAR. The gentleman is recognized.

Mr. HANCOCK. Mr. Chairman, today we will hear testimony on a problem that continues to plague U.S. manufacturers. Although the widespread publicity has subsided, the product liability claims brought against manufacturers and the cost of claims paid continue to increase.

In my opinion, the consequences of these claims have contributed to our Nation's inability to lead the world in some international markets.

A 1986 survey shows that 47 percent of U.S. manufacturers withdrew products from markets for liability reasons. In addition, 39 percent decided against introducing some new products, and 25 percent discontinued some form of new product research.

I do not think that 47 percent of this Country's manufacturers found that their products were too dangerous to put on the market. It is more likely a result of the great liability burden placed on manufacturers by the courts.

I commend the Chairman for choosing to address one aspect of this problem by examining its effect on general aviation industry.

These manufacturers are perhaps most affected by the increase in product liability claims. Although the safety record of general aviation improves every year, the liability claims continue to rise.

The cost of these claims have climbed from $24 million in 1977 to $209 million in 1985. One manufacturer averages a quarter of a million dollars a month in defense costs along, excluding judgments and settlements.

This increase is hard to believe, but I am a business man, not a lawyer, so I am unfamiliar with the benefits of these exorbitant claims.

I am sure that we will hear unbelievable stories today of manufacturer's liability costs and the impact they have had on this industry.

I am also sure that we will be asking ourselves, why were these manufacturers held liable for accidents that were caused by the factors that did not relate to them?

As a general aviation pilot, I know that on average, a 12 year old airplane will have had three owners, two or three major engine overhauls and perhaps dozens of maintenance procedures performed by any number of service facilities. And, that pilot error is the cause of or is a contributing factor in over 80 percent of the fatal general aviation accidents. Yet, in the majority of cases, the manufacturer is still the liability bearer when the accident occurs.

The consequences of the current tort system have severely crippled the general aviation industry. The great liability burden produced by this system has contributed to a drastic loss of jobs in the major airframe building companies from around 49,700 people in 1980 to a little over 18,900 people in March of this year. That is a decline of over 65 percent.

In addition, factories have been closed, entire product lines discontinued and sales of domestic aircraft have taken a nose dive; all

resulting in a severe disadvantage in competing with foreign aircraft manufacturers.

Mr. Chairman, I am pleased we are addressing this problem. I only wish that the Association of Trial Lawyers could be here today to present their side of the issue.

I hope that this Subcommittee works quickly in considering legislation that is fair and equitable to both the victim and the manufacturer.

Also, I ask that this Committee encourage the other committees with jurisdiction over this matter to work with equal speed to relieve this unfair liability burden.

Thank you, Mr. Chairman. I look forward to the testimony.

Mr. OBERSTAR. Thank the gentleman for that very fine, thoughtful statement.

Are there other comments?

[No response.]

Mr. OBERSTAR. If not, the Chair would ask unanimous consent to include in the record at this point a statement by our colleague and former Chairman of the Subcommittee, Mr. Mineta; and statements of our colleagues Mr. Costello and Mr. Payne. Without objections, so ordered. And unanimous consent also to include in the record a letter on the subject from the Secretary of Transportation to Chairman Anderson, also to be included in the record.

[Mr. Mineta's statement, Mr. Costello's statement, Mr. Payne's statement, and letter from the Secretary of Transportation follow:]

STATEMENT OF HON. NORMAN Y. MINETA

Good morning. Thank you, Mr. Chair, for scheduling this hearing on an issue important to this Subcommittee and to the field of general aviation.

I am proud to be an original cosponsor of H.R. 1307, introduced by my good friend, Congressman Dan Glickman. This Subcommittee held hearings on this issue in the 100th Congress, and the full Public Works and Transportation Committee approved the Subcommittee's bill.

Today we are again discussing liability insurance costs and their impact on the manufacture and sale of general aviation aircraft.

The decline in general aviation manufacturing is well established. General aviation aircraft sales by U.S. manufacturers have declined from approximately 17,000 units sold in 1979 to less than 1,500 sold in 1986. Employment in the industry is down by approximately 70 percent since 1980.

The decline in general aviation aircraft sales has been accompanied by massive increases in the industry's liability insurance costs. A survey of manufacturers indicates that the industry's insurance bill has grown by 500 percent since 1981. In 1985, annual insurance costs for general aviation airframe manufacturers totaled $135 million.

Congressman Glickman's bill is designed to place limits on the liability exposure of manufacturers. It is important to note that the bill does not impose any caps on the damages which could be collected. Rather, the bill would limit liability by establishing uniform standards on such questions as joint and several liability, statutes of repose, and the weight to be given to evidence that aircraft has been designed in accordance with the state of the art and current FAA regulatory standards.

Today, we will again discuss the connection between the increase in liability insurance costs and the decline of general aviation manufacturing. I believe that the evidence will again indicate that Mr. Glickman's legislation will be a fair mechanism to address the liability costs for general aviation.

I look forward to today's testimony and the discussion with our distinguished witnesses.

Thank you, Mr. Chairman.

STATEMENT OF HON. JERRY COSTELLO

Today's hearing on the General Aviation Standards Act will focus on determining liability in cases involving general aviation aircraft.

The general aviation industry has seen a serious decline in recent years, in large part due to increasing liability insurance costs. Unfortunately, these increases have occurred even as the industry's safety standards have improved.

In setting uniform standards for liability cases, this bill will attempt to control the increasing problems that must be addressed if general aviation is to continue to be an important part of our country's transportation and aviation industry.

General aviation is an important contributor to the Southwestern Illinois economy. Focusing on ways to make the industry safer and healthier will benefit communities and fortify a part of our transportation system that deserves our continued support.

STATEMENT OF HON. LEWIS F. PAYNE, JR.

Mr. Chairman, thank you very much for providing this opportunity today to review legislation which would establish uniform standards for determining liability in general aviation accidents. I also want to thank my colleague, Dan Glickman, for introducing this legislation.

I support H.R. 1307, the General Aviation Standards Act of 1989. I am concerned about the dramatic increases in liability insurance as a result of litigation in general aviation accidents. The unfair burden of this insurance cost can render a business inoperable if carried to the extreme. It is very important that we have a uniform policy governing such litigation. H.R. 1307 appears to be a fair and reasonable avenue for dealing with this particular problem regarding general aviation.

We have a golden opportunity to rectify a growing problem for the general aviation industry and its customers, and I appreciate this opportunity today. I want to thank all of the witnesses who are joining us today, and I look forward to hearing their testimony.

THE SECRETARY OF TRANSPORTATION,
Washington, DC, May 23, 1989.

Hon. GLENN M. ANDERSON,
Chairman, Committee on Public Works and Transportation,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The U.S. aviation industry is one of the bulwarks of our economy, and its manufacturing sector is the world's leader. This leadership position was forged in a climate of vigorous competition, both domestic and international. We have a vital stake in preserving and fostering that competitive climate and in ensuring that U.S. aircraft manufacturers not only enjoy a level playing field abroad but also shoulder no unnecessary competitive disadvantage at home.

General aviation's manufacturing industry does operate at such a disadvantage today. Because of its very success in the past, the U.S. general aviation manufacturers confront a huge liability exposure created by the very large number of long lived American built aircraft in the world's active operating inventory. Foreign manufacturers of general aviation aircraft face no such exposure and also enjoy much more favorable and less costly liability regimes in their own countries.

The U.S. general aviation manufacturing industry needs and deserves the modest relief offered by H.R. 1307, the "General Aviation Standards Act of 1989." The bill would establish consistent, predictable federal standards nationwide for determining personal injury and property damage liability in general aviation accidents. The compelling justification for this legislation is a decade or more of mounting product liability claims against and losses by general aviation aircraft manufacturers. These product liability costs have risen to the point where they now constitute the largest single factor in the price of a new single engine airplane. If general aviation were unsafe or even tending in that direction, I could see some merit in this outcome. But the fact is that general aviation has never been safer than it is today. Moreover, the long-term trend in general aviation safety has been pronounced improvement for nearly half a century. In looking at the trends in general aviation product liability claims and settlements, I must conclude that the tort liability system, as it works today in the field of general aviation, is inequitable and unfair.

H.R. 1307 would go a long way in correcting the imbalances and biases of the tort liability system as it operates in the general aviation field today. Accordingly, the

department supports the bill, deferring to the Department of Justice on technical aspects of the bill, and urges favorable action by the Committee.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

SAMUEL K. SKINNER.

Mr. OBERSTAR. And the Chair would like to read just the last part of the Secretary's letter.

In looking at the trends in general aviation product liability claims and settlements, I must conclude that the tort liability system, as it works today in the field of general aviation, is inequitable and unfair.

H.R. 1307 would go a long way in correcting the imbalances and biases of the tort liability system as it operates in the general aviation field today. Accordingly, the Department supports the bill, deferring to the Department of Justice on technical aspects of the bill, and urges favorable action by the Committee.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

I think that is a very useful note on which to begin our hearing.

The first witness today is our colleague and author of the pending legislation, Mr. Glickman of Kansas.

Dan, welcome to our Subcommittee. Thank you for your leadership in the field of aviation. You have demonstrated long standing concern and a very substantive knowledge of technical issues in aviation stemming at least in part from the fact that your District has been the home of a good deal of aviation manufacturing and aircraft manufacturing. And we respect that interest, but we also respect the knowledge and the substantive grasp of the issue that you bring to this legislative hearing.

TESTIMONY OF HON. DAN GLICKMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. GLICKMAN. Thank you, Jim, and appreciate the members of the Committee scheduling this important hearing.

I would note that this Committee produced a result, marked up and reported out the exact bill, which I then introduced this year. So it is a exact replica of what the full Public Works Committee reported out.

Mr. Chairman, I have just a short statement and I would beg your indulgence. I have to run to the Judiciary Committee. We are taking up the S&L bill today and I have a couple of amendments to that bill. So, I would ask your indulgence and put my entire statement in the record, if possible.

Mr. OBERSTAR. Without objection, the entire printed statement will be included in the record.

Mr. GLICKMAN. First of all, as you mentioned before, I represent Wichita. My hometown produces half the airplanes made in the world; Beech, Cessna, Learjet are headquartered there as well as the Boeing Company. We just produce a lot fewer airplanes than we use to produce.

Boeing is doing well. Beech, Cessna and Lear have been on their knees, improving slightly as the higher end market, the corporate market, has improved some. But for them and for America the smaller airplane market is still weak and in some cases nonexistent.

That is bad for Wichita because of jobs, but it is bad for the Country because the small plane market, the single engine market, has been the bulwark of flying, the bulwark of aviation in America, and it is just about gone. My contention is that the liability costs are a great part of the problem. As Mr. Clinger said, they are not the only part, but they are a giant part.

Anytime you go in 10 years from $24 million to nearly $300 million in liability costs when you have a dramatic improvement in safety, something is wrong. It does not make any sense.

Why would we be paying over 10 times the amount of liability costs when we have had fewer accidents, fewer fatalities and greater safety? It does not make any sense, and that is exactly what we have in this industry.

The trends in liability have gone the wrong way. The trends of employment obviously have gone the way that none of us would like them to go. And the interesting irony is that foreign manufacturers are filling in the void.

Unless we act soon, we may see the names of Beech, Cessna, Learjet and Piper replaced by Socata, Grob, Porsche, Rushmeyer, Sammi and Agusta. The FSX deal has brought needed attention to the potential loss of U.S. preeminence in a vital industry, aviation.

We need to look out for our own or we will find that general aviation has gone the way of color television, VCRs, and computer chips.

This bill, which we have had great input on from the General Aviation Manufacturers Association, from a lot of the individual folks involved, and from your Committee is a reasonable one.

It sets uniform standards of liability that makes sense. Its basic principles are that a manufacturer should not be liable forever for the performance of a product, which is the way it is right now; and, that number two, that liability too should be tied to blame or fault.

That is the essence of this bill; no caps, no limits on contingency fees, no punitive type steps that will prevent people from legitimately suing when they have been harmed by a defective or a wrongful product.

Third of all, this industry is pervasively regulated by the Federal Government from birth to death. You cannot get in unless you are licensed by the FAA. You cannot fly unless you fly through a Federal air traffic control system. You cannot build an airplane unless the FAA certifies that airplane.

Federal laws, therefore, should control liability as well. Why should we have 50 different state laws when there is no state regulation of aviation? I think that creates the intellectual reason why a bill like this should follow.

I just would mention a few quick things. I know that the American Trial Lawyers has indicated a great deal of opposition to this bill. They have published a brochure on it. I think Mr. Stimpson and other folks will testify on it.

I think their concern is largely based on the fact that we will open the door here. We will create the opportunity for Federal product liability everywhere. And I understand their concern. But, unfortunately, it does not deal with the problem we have that an industry is being driven into the ground because of the peculiar

nature of liability as it effects this industry, which is federally regulated.

So, I would urge you to resist those arguments because they are not relevant. They are political arguments related to the larger issue, and they are not related to the smaller issue of this industry.

And, by the way, we have in the past dealt with liability as related to specific industry. In the vaccine area we created a Federal liability scheme for that industry because of, as you may recall, the Swine Flu epidemic, and there is no reason—and that was a federally regulated industry, a Federal issue. There is no reason why we should not have a Federal response to this particular issue as well.

Second of all, the argument is sometimes made, well, this is really an insurance problem and, therefore, if we modify the laws that regulate insurance, it would be dealt with.

But I would point out that the aviation insurance carriers for the most part are not subject to the McCarran-Ferguson Act, which is the law which basically provides for state regulation of insurance companies.

So, one may be able to make the argument that if we just change regulation of insurance, it will effect this industry. But it will not because this industry is not subject to the same protection under Federal Anti-Trust laws as is other insurance industry.

Third of all, the significance of general aviation to America; Mr. Inhofe talked about this for a moment. We have gone down the road of deregulation of the airline industry, which, of course, this Committee has been involved with. But it has left an enormous void in underserved areas.

If you live in large population areas or in Hub airports, you are doing great, but everywhere else in the country is suffering from lack of service, loss of service, high fares. General aviation offers an opportunity for all people to participate in moving goods and services and themselves around this country.

And I just worry that if we lose the industry, we are going to see vast areas of America underserved.

Finally, I will just mention that I serve on the Judiciary Committee, which in the past has been a stumbling block to this bill. I cannot come here today and promise you that we necessarily have any miracles there.

We do have a new chairman, however, and I believe that Mr. Brooks is open minded on this subject. A quick and decisive vote by the Public Works Committee, I think, will send a very good signal to the two other committees of jurisdiction that you believe this is important, you are the prime committee that has jurisdiction over aviation, and I think it will give us the impetuous to move it through the Judiciary Committee as quickly as possible.

We took this bill up very late in the session last year. You reported it out, but we are early enough in the session that I think we can do something important for it.

So, I thank you for letting me testify. The witnesses following me are very, very—much more sophisticated in the aspects of the law than I am. But I think we have a fair bill, a reasonable bill, and one that will do a large part to restore this very vital industry to America.

Thank you.

Mr. OBERSTAR. Thank you very much, Dan. We greatly appreciate your thoughts and you have elucidated a number of the issues and concerns that we have generally in the field.

I had four questions that I wanted to ask you. You answered one of them already. So, I will not pose it, and that is, why general aviation should not be subject to the same rules that govern all product liability cases?

You pointed out that we have done some specific—or case specific legislation, to wit, the Swine flu issue. I fully agree with your view that this is an industry and one—and it is a view that I have expressed many times—so regulated from start of manufacture to landing of the aircraft and every step of the way along its route. Why shouldn't this area be subject to regulation as well?

And, furthermore, I think just the fact that everything that happens in aviation is so intensively regulated militates against the arguments that the Trial Lawyers make about leaving this issue open to general liability standards.

But I would like to ask you whether there are cases in which a manufacturer should be held liable for failure to use state of the art technology even though the FAA may not have required such technology?

Mr. GLICKMAN. Well, I think for the most part I would opt for reliance upon the FAA. I think it requires that the FAA do its job properly, but if they are holding themselves out as the prime regulator, for the most part I say that we have to rely on them to do their job correctly.

The bill does not absolutely foreclose liability even under the circumstances that you talk about. But I must say that in this one, the whole purpose of this bill is to establish some regularity, some predictability and I think that we have to rely upon the FAA to do its job correctly in defining what is the state of the art.

Mr. OBERSTAR. Your bill provides that the general aviation aircraft manufacturer has a duty to incorporate safety features that are reasonably feasible or possible according to the state of the art in engineering at the time of manufacture of a particular aircraft.

Mr. GLICKMAN. That is right.

Mr. OBERSTAR. They should not be required to anticipate something that may come along down the line or later on.

I guess the view of the Trial Lawyers Association would be that product liability has a role in promoting aviation safety. The threat of product liability law suits will force manufacturers to operate at a higher standard of safety. I think that is summing up sort of the other side of this argument.

Mr. GLICKMAN. This bill does not remove product liability law suits. All it says is that there has to be some regularity to them, some uniformity to them.

So, I think that threat is still there even with this legislation.

Mr. OBERSTAR. The statute of repose, as of course is different from a statute of limitations, you are not in effect putting a statute of limitations provision in this—or inserting it into this issue, but the question I have is should the manufacturer be required to stand behind that aircraft for a period longer than 12 years, and why is 12 years selected? Is there some statistical support for that number?

Mr. GLICKMAN. I think GAMA can probably give you a more specific number. This, of course, I think had to do with average length of life and other factors regarding useful life in the industry and there may be nothing holy about 12 years. We thought 12 was a reasonable time. The Senate bill last year I think had 20 years in it.

But I think whatever it is—the fact of the matter is airplanes are built to defy the laws of gravity. So, since they are, they are built to last longer than most products. So, I suppose the basic elemental question is, ought there be a period of time when after that time the manufacturer is not quote automatically liable if something happens? I think, yes. I think that this Committee can go through and look to see what that time is. I think 12 years is for the burden to be reversed, so to speak, on liability.

We are not saying the manufacturer would not be liable under any circumstances before that time. It just has to do with the burden.

You know, it strikes me that at some point it could become ridiculous. What if you are going some place and sitting on a product that was made 100 years ago and fall down? Do you sue—who can you sue?

I was thinking about it. If you go into, let us say, a museum and you sit on an old chair that was made 100 years ago and you fall down. Do you sue the manufacturer of the chair? Of course not. You might sue the museum for not warning you to not sit on the chair because it may break.

But at some point it should not be the manufacturer's responsibility any more, particularly after it has been through, as Mr. Hancock says, different owners and operators.

Mr. OBERSTAR. Well, whatever fixed period of time we chose in legislation, and we do it quite regularly in this body, that number is subject to question and we want to make sure that, whatever the number is, it is the most defensible period of time.

Thank you.

Questions for Mr. Glickman? The gentleman from California, Mr. Packard.

Mr. PACKARD. Thank you, Mr. Chairman. I am aware of your time constraints.

In your legislation then, if there is clearly some defects that are determined after the 12 year period is gone, liability still exists.

Mr. GLICKMAN. Well, that is correct. I mean particularly if there is knowledge or reasonable knowledge, you know, of those defects. And I think again that you would probably want to talk to GAMA about how they do that. But you are not absolutely absolved of liability after the period of time. It just has to do with things like burdens and presumptions and those kinds of things.

Mr. PACKARD. Thank you. That is all I have, Mr. Chairman.

Mr. OBERSTAR. Thank you.

The gentleman from Georgia.

Mr. JONES. Have no questions.

Mr. OBERSTAR. The gentleman from Louisiana.

Mr. HAYES. I would just say that despite the active involvement of the gentleman from Kansas, I continue to support this legislation. [Laughter.]

Mr. OBERSTAR. That is what is called a backhanded support.

The gentleman from Colorado.

Mr. SKAGGS. Thank you, Mr. Chairman.

Just a quick question because I know you have got to run, Dan. We had some discussions last time around on this particularly with regard to the joint and several liability issue.

I am interesting in whether you seen any potential for some compromise on that that would reflect I think the basic point, which is a valid point that if a manufacturer or anybody else is found to be 5 or 6 percent responsible for an injury they should not have to shoulder the whole blame. My feeling is at some point up into the middle range of fault a jury or a fact finder is saying both of these people or all of these three people are primarily or significantly responsible.

Mr. GLICKMAN. I recall you talked about if you had a high enough percentage of fault like 30 or 40 or 50 percent as a threshold of liability then joint and several standards would kick in. Well, again I guess my concern about that is, the whole fairness issue.

I still believe if you are 30 percent at fault, you ought to be 30 percent responsible for damages, not 100 percent responsible for damages.

Mr. SKAGGS. And if we knew that juries were making those kind of precise mathematical judgments, I might feel more comfortable with it. I think juries do not—they are really reflecting a basic evaluation of a case and the law forces them to come up with numbers rather than the other way around.

I am also curious, and we do not need to get into a debate about this this morning, whether or not making some progress in that area would not facilitate getting over some of the stumbling blocks in your other committee, which you need to get to, and would look forward to working with you on that.

I think your purposes are absolutely valid. It is a question of means to get to the ends.

Thank you, Mr. Chairman.

Mr. GLICKMAN. Thank you.

Mr. OBERSTAR. The gentleman from Iowa.

Mr. LIGHTFOOT. I would like to have unanimous consent to enter an opening statement in the record.

Mr. OBERSTAR. Without objection, so ordered.

[The statement of Mr. Lightfoot follows:]

STATEMENT OF HON. JIM LIGHTFOOT

Thank you, Mr. Chairman. I'm pleased you've called this hearing today to consider legislation introduced by our colleague, Congressman Glickman, to reform liability involving aviation accidents.

As a pilot and flight instructor, I'm aware of how troublesome the issue of liability is for the general aviation industry. I have cosponsored the bill before us today, H.R. 1307, out of awareness of the need to address the problem of liability in aviation. As many of us know, the costs of liability have driven expenses in general aviation to extremes. Few private aircraft are manufactured in this country today.

Again, I commend the subcommittee for taking up this issue, and I look forward to hearing the testimony of our witnesses. I am hopeful that once our committee addresses this issue, we can persuade our colleagues in other committees with jurisdiction to give the issue the attention it sorely needs.

Thank you.

Mr. LIGHTFOOT. And like many of our colleagues on this committee, we have been with Mr. Glickman since the beginning on this particular issue. But your question a moment ago, Mr. Chairman, brought up a thought I think was a side issue that we have not really discussed at great length, and that is in the area of repair as well as on aircraft.

I have got a 1960 Beechcraft Debonair, which has got some filigree corrosion on the tail feathers, which is the old magnesium surfaces. I contacted Beech. They said the only thing you can do is replace it for about $1,500 per side. I finally found an old mechanic who had worked on it and for about $10 worth of chemicals at the local drugstore and a new coat of paint we got it fixed for about $60. But the company was so afraid to recommend a tried and proven method of stopping the corrosion, they just flat recommended to replace it because they were afraid of the liability aspect.

So I suspect that we are seeing repair cost being driven up as well as in the initial purchase price, and that hurts the industry very dramatically.

Thank you for your work on it.

Mr. GLICKMAN. Thank you.

Mr. OBERSTAR. Thank you.

The gentleman from California?

Mr. BOSCO. No questions.

Mr. OBERSTAR. Other members?

[No response.]

Mr. OBERSTAR. Thank you very much for your testimony. We will rely on your putting the shoulder to the wheel in the Judiciary Committee to move this legislation through after this Committee has acted upon it, and we anticipate doing that in the reasonably near future.

Mr. GLICKMAN. Thank you very much and appreciate it very much.

Mr. OBERSTAR. Thank the gentleman.

[Mr. Glickman's prepared statement follows:]

STATEMENT OF HON. DAN GLICKMAN

Mr. Chairman, members of the subcommittee, I want to thank you for inviting me to testify here today. The issue of general aviation liability is paramount to the district I represent, Wichita, Kansas. Not very many people know that half the planes in the world are made in Wichita by Beech, Cessna, Learjet, and Boeing. Boeing is doing record-breaking business, but the general aviation industry is on its knees. This is bad for Wichita and for the country because the United States traditionally has been the leader in this high-tech industry. Burdensome liability costs are dragging this industry down.

Liability costs for American general aviation manufacturers have skyrocketed—from $24 million in 1977 to $210 million in 1988, despite a steady improvement in safety. The general aviation industry has suffered badly as a result, and the situation is not improving. The industry sold 1,143 planes in 1988, compared with over 18,000 a decade ago. Employment has fallen by sixty five percent since 1980. The irony of all this is that 1988 was the safest year ever in terms of accidents. If there is ever going to be any kind of real recovery, the laws that affect these liability costs will have to be changed.

Foreign manufacturers are moving to fill in the void. Unless we act soon, we may see the names of Beech, Cessna, Learjet, and Piper replaced by Socata, Grob, Porsche, Rushmeyer, Sammi and Agusta. The FSX deal has brought needed attention to the potential loss of U.S. preeminence in a vital industry. We need to look out for our own, or we will find that general aviation has gone the way of the color television, VCR, and computer chips.

The General Aviation Standards Act of 1989 is a reasonable bill. It sets uniform federal standards of liability that make sense. Two fundamental points it addresses are that a manufacturer should not be liable forever for the performance of a product, and that liability should be tied to blame. The deep pocket in this industry has run out of resources and cannot continue to be called upon to pay for the fault of others. Further, in an industry pervasively regulated by the federal government, from pilot licensing to manufacturing specifications and air traffic control, federal laws should decide questions of liability as well.

I thank the Chairman for this time, and I urge you to mark up this bill as soon as your busy schedule allows.

Mr. OBERSTAR. Our next witness is Mr. Edward W. Stimpson, President, General Aviation Manufacturers Association, accompanied by Mr. John S. Yodice, General Counsel, Aircraft Owners and Pilots Association; Jan Vonflatern, General Counsel of Piper Aircraft Corporation; and Frederick B. Sontag, President, Unison Industries, Inc.

TESTIMONY OF A PANEL CONSISTING OF MR. EDWARD W. STIMPSON, PRESIDENT, GENERAL AVIATION MANUFACTURERS ASSOCIATION; MR. JOHN S. YODICE, GENERAL COUNSEL, AIRCRAFT OWNERS & PILOTS ASSOCIATION; MS. JAN K. VONFLATERN, GENERAL COUNSEL, PIPER AIRCRAFT CORP.; AND MR. FREDERICK B. SONTAG, PRESIDENT, UNISON INDUSTRIES, INC.

Mr. STIMPSON. Thank you, Mr. Chairman, and thank you for scheduling these hearings this morning and for the action this committee took last year.

As Mr. Glickman pointed out, the legislation before you today is identical to the bill that was reported by this committee last year and we appreciate your action and hope you will do the same this year.

The panel with me this morning, as you introduced, represents a wide segment of our general aviation industry. I think it is particularly significant that Mr. Yodice is here because this legislation has had the full support of aviation consumers and those people who are buying our products, and Mr. Yodice will speak to the support that his group and others have had for this bill.

As you point out in your opening statement, the vitality of the general aviation manufacturing industry has been severely affected the last few years. Unit deliveries plummeted in 1979 from 17,000 airplanes to only 1,143 last year.

And I know of your interest in our competitive position abroad and this is a highly competitive factor. The whole product liability must be looked at in a broader sense in what this is doing to our U.S. industry.

Now I would not say that all of the ills of the general aviation industry are attributed to product liability, but the fact remains that product liability is the single largest cost factor when fully allocated in production of a new single engine piston aircraft today.

And it is this basis, it is the grass roots basis of America, of our industry which is a building block for the whole general aviation industry. And when you go from 17,000 airplanes down to 1,100 airplanes a year, there is a wide fallout and you will hear from our other witnesses this morning what it has done to vendors, suppliers and others in the industry and to our technology.

Dan Glickman mentioned the fact instead of the well known names of U.S. manufacturers that we know today, the Pipers, the Beeches, the Lears, the Cessnas, someday we may see the Grobs, the Rushmeyers, the Sammis and the Agustas instead of our U.S. industry.

And this is why we are concerned. We are concerned about the pilot population of America. People learn to fly in the small single engine airplanes not only in our universities and colleges and flight schools, but the mom and pop flight operations throughout the country.

Cessna Aircraft, for example, which was the largest producer of airplanes in the world producing nearly 9,000 piston airplanes a year, is no longer making piston airplanes; zero. Last year they made 180 airplanes both turbo props and jets, but no single engine airplanes.

And the chairman of Cessna said publicly 2 weeks ago that Cessna would not be back in the single engine business again until something was done about the product liability situation.

One of the challenges that we as manufacturers face is that we are responsible for every single airplane that was ever built ever, as you pointed out, and there is a fleet of some 220,000 airplanes out there. And, in fact, if the Wright brothers were still flying today, they would be responsible for that airplane.

And what this legislation attempts to do, through the statute of repose, is to address that problem. The product liability situation in general aviation is not improving.

Manufacturers are responsible for this aging fleet. Even though these planes may not be adequately maintained, they are operated. We still are responsible and the product liability costs for this large aging fleet have not abated.

Fortunately, we have had fewer accidents, and I think this is very significant. The general aviation accident rate continues to improve, but we still see product liability costs increasing.

As Mr. Glickman pointed out in his statement, the general aviation liability issue is not an insurance issue. You will hear this morning from Piper that they are completely self-insured. Other companies are self-insured for levels up to like $100 million.

It is the current court's tort system that is helping drive up these costs and not the availability or the rates of insurance. In fact, in some cases manufacturers are finding insurance rates coming down a bit due to increased capacity. But product liability still remains a huge cost factor.

The fact that H.R. 1307 has the support of every major general aviation group in publication is a very significant thing for this legislation. These groups are concerned about the future. They are concerned about the future of the industry and whether they are going to be able to get new products, new parts at costs they can afford.

This legislation has also had wide support in this Congress with over 210 co-sponsors on this legislation last year.

Mr. Chairman, it is highly appropriate that this committee take the lead in this reform legislation. As you know, the Federal Government has had a major impact on the development of this industry. They oversee and supervise every facet of the industry whether

it is the design and certification of the products, or the operation, the investigation of accidents.

The only thing that is not federally regulated is what happens after the accident, and this is why a Federal tort statute is a logical and necessary compliment to this extensive Federal regulation.

As you pointed out, this legislation has gained some attention from the Association of Trial Lawyers. Earlier this year, they put forward a brochure on this bill. We, unfortunately, feel that this has been a distortion and misrepresentation of this legislation.

A number of statements were taken out of context in the ATLA brochure, and we have prepared a rebuttal to this brochure, which I would very much like to insert for the record, which I hope will put some of these distortions and charges to rest as the committee considers this legislation.

Mr. OBERSTAR. Is that an addendum to your statement?

Mr. STIMPSON. No, I will have this separate.

Mr. OBERSTAR. Without objection, the document referred to will be included in the record following Mr. Stimpson's prepared remarks.

Mr. STIMPSON. Great.

At this point, Mr. Chairman, unless you have any further questions or comments, I would like to call on Ms. Jan Vonflatern, General Counsel of Piper and then Mr. Sontag and Mr. Yodice.

Mr. OBERSTAR. Ms. Vonflatern.

Ms. VONFLATERN. Good morning, Mr. Chairman, members.

I appreciate the opportunity to address the committee today in support of H.R. 1307.

I represent a company, which along with its 1,500 workers and their families, has a direct and intense interest in the passage of this legislation.

Piper is 52 year old company whose special contributions to personal aviation are well known, even outside the flying community.

Most Americans are familiar with the Piper Cub, the airplane, that has been said, that taught America to fly. In fact, in its long history, Piper has built more than 120,000 airplanes ranging from the venerable Cubs to the multi-passenger, turbine-powered Cheyenne 1000. Today, 90,000 of those airplanes are still flying.

At one time, Piper Aircraft Corporation consisted of five manufacturing facilities whose 5,000 employees built thousands of airplanes every year.

Today, Piper's single plant, located in Vero Beach, Florida, employs 1,500 people and this calendar year those workers will produce 785 airplanes.

The important point to be understood about the numbers for 1989 is that 2 years ago they were much worse. In 1987, Piper was down to 800 employees and gave the world only 276 airplanes.

The company was typical of an industry which was ranked by the Department of Commerce in 1986 as 211 out of 211 U.S. industries surveyed in annual growth.

Piper was the victim of several adverse economic events, chief among them, a tort system which had multiplied product liability costs several hundred fold over the previous 10 years.

When Piper's current owner, Stuart Millar, bought the greatly diminished company for cash from its corporate parents in May of

1987, he did so with the determination to make it work again. And he has begun to accomplish that goal.

The company he purchased in 1987, had $6 million in back orders. This year we will close out the year with $150 million in outstanding orders. Piper is building small single engine Cadets to train the beginning pilot and specially configured Cheyennes to train airline pilots.

The elegant Malibu Mirage is back ordered through 1990, and the reborn Supercub continues to sell to those who treasure the joys of simple flying.

Piper Aircraft is doing its level best to keep general aviation from disappearing from the American scene.

However, I am here today to tell you that the greatest single obstacle to Piper's recovery and to the survival of the small plane industry in this country remains product liability.

There is no way that Piper or any small company can sell airplanes fast enough to outrun the American tort system if some of its ludicrous excesses are not curbed.

Insurance, even against the catastrophic case, is not economically feasible for Piper. For fiscal years 1985 and 1986, Piper's product liability costs, including insurance premiums, uninsured judgments and settlements and defense costs approached $40 million or $90,000 per new airplane sold during those years. I would note that our small airplanes were selling for $35,000 to $50,000 at the time.

Information available to us indicates that today coverage, if it can be called that, even in what is universally called a soft insurance market would be comparably priced. As a consequence, Piper is self-insured, currently carrying no insurance coverage whatever.

Even without the enormous expense of insurance premiums, our product liability costs today are staggering. Piper is the manufacturer referenced by Mr. Hancock which pays approximately $250,000 every month to its own attorneys, and somehow absorbs the virtual and measurable costs of engineering time required to support those lawyers.

We have several senior engineers whose talents and decades of experience rather than going toward the production of airplanes are devoted week after week to litigation.

Further, the exponential increase in number and size of verdicts and settlements has driven hundreds of aviation component manufacturers out of the business forcing Piper to replace vendor after vendor.

Finding an alternative supplier for an aircraft component, virtually every part of which is subject to stringent certification based standards, is expensive and time consuming.

In the past year, Piper has been forced to do this many times because of a vendor's fear of aviation product liability exposure.

To do it on a single bolt costs $300. For a complex, custom-made component, such as a windscreen, the cost approaches $100,000. On an average, 378 work hours or $12,000 is spent every time a vendor tells us he can no longer risk supplying product for aviation application.

As a side note, I am unaware of any foreign vendor, at least in the last year and a half, who has taken this position. It is the American suppliers that we are losing.

H.R. 1307 would not resolve the complex situation overnight. However, it would eliminate some of the most glaring injustices in the system.

For example, the bill would provide that a manufacturer would not be liable if an airworthiness directive had been issued pertaining to the accident causing condition and had not been complied with.

An airworthiness directive, as I am sure all of you know, is issued by the FAA, addresses a matter of air safety, and is absolutely mandatory.

It is issued after consultation with manufacturers, as well as governmental experts, and normally after a notice and comment period, and yet, it is often ignored.

Occasionally, this disregard by the operator has the predictable result and an accident occurs, whereupon, the manufacturer, who at least in Piper's case, notifies each and every registered owner of an existence of an A.D. is issued. I submit to you that this is unfair.

Another aspect of H.R. 1307, which represents a return to sanity, is the repose provision, providing that an action will not lie against the manufacturer based on airframes or components which are more than 12 years old.

Half of Piper's fleet, like those of our competitors, is older than 12 years. From actual experience, we know, also as Mr. Hancock noted, that by the time it reaches this age, a Piper airplane has had three different owners, two or three major overhauls, dozens of maintenance procedures at facilities we may or may not know anything about. It has been flown by an unknown number of pilots of all skill levels, and has been hangared, flown and landed in climates and under conditions over which Piper has no influence.

It may have been modified by supplemental type of certificates in ways that Piper could never imagine when it left the factory.

Despite all of this, the manufacturer can expect to be sued for as long as the airplane flies, which in the case of a sturdy little Piper is a long time.

Because of this, the manufacturer must bear the cost year after year of insuring every airplane it has ever built. The burden is crippling and common sense should tell us it is excessive.

One other provision of this bill, which I particularly commend to you, is that eliminating joint and several liability. This aspect of the bill does no more than provide that a company such as Piper can be required to pay for whatever wrong it does; no more and no less.

It will eliminate the fundamentally unjust requirement that Piper pay for pilot error if the pilot or his estate happens to be insolvent.

Piper does not wish to avoid responsibility for its product and has no intention irrespective of the fate of this legislation of ever doing so.

Despite the fact that our judicial system almost invariably allows it to be used against us, I am proud to say that Piper, under Stuart Millar, does not hesitate to tell our owners of any potentially unsafe condition we identify.

Our accident investigators examine every crash for what it may tell us about the safety of an airplane and not for what implications it may have in a courtroom.

Piper is as committed to those loyal aviators who fly and lovingly maintain its older aircraft as it is to the affluent buyer of a shiny new Malibu, but we do not believe the system serves them any more than it does the company.

This is because what we have in place today is a system in which a law suit may be brought against the manufacturer of a 20- or 30-year-old airplane based on alleged defects which the FAA and the manufacturer have warned the operator to correct.

Further, 100 percent of any damages in such a law suit can be collected against that manufacturer even if the accident is 95 percent attributable to a judgment-proof pilot.

The system is unfair, unjust and it nearly killed Piper aircraft, among others.

I hope the Public Works Committee will favorably report H.R. 1307, as you did H.R. 2238 last year, so that American leadership in the field of personal aviation will not be irretrievably lost.

Thank you.

Mr. OBERSTAR. Thank you very much for very helpful testimony.

We do have a vote in progress on the House floor. Mr. Sontag, do you have a prepared statement to submit for the record?

Mr. SONTAG. Mr. Chairman, I have prepared statement that has been submitted for the written record. I would like to divert from that statement, if I could.

Mr. OBERSTAR. Without objection, the statement will be included in the record and we would invite you to summarize for approximately 5 minutes, in which point we will break and go to the floor to vote and resume following that vote. And if you require a longer time, we will pick up after that.

Mr. SONTAG. Thank you, Mr. Chairman.

I also was here a year-and-a-half ago before this committee on this very same bill, and I appreciate the opportunity to testify.

I am President of Unison Industries. Unison Industries, until December of last year, employed 100 people in the manufacture of magneto ignition systems for small airplanes.

The company was located in Rockford, Illinois. In January of this year, our company acquired a much larger company in Jacksonville, Florida, which also is in the field of producing aviation ignition systems.

The larger company was approximately five times the size of our Rockford operation, and yet to our surprise, when we went to price our product liability insurance premium for the larger entity it was priced at one-third the cost of our Rockford company. That is a difference of 15 times the rate between the Rockford entity of magneto ignition system production and the Jacksonville, Florida, entity that we acquired, which was also in the aviation ignition business.

We ask ourselves why this could be? Why we could pay 15 times the rate, and the answer is really quite simple. Almost 100 percent of our production in Rockford, Illinois, goes to the support of the general aviation market place, the small airplane that we are talking about today.

On the contrary, in our other operation that we acquired, most of its production goes for the support of commuter and commercial airlines. Obviously the product liability underwriting community has found that our general aviation production facility was much more risky than the aviation ignition equipment production in Jacksonville, Florida, and with just cause.

On the average, our Rockford facility has working actively two to three product liability suits. As we speak today, we have two active liability suits against our Rockford organization.

Let me briefly tell you about each of the two. In the first case, a group of four young men decided to go on a pleasure flight in a older 11 year old airplane, and as they taxied up to the runway ready to take off, the pilot went through his run up. The run up, if you happen to be a pilot, is the events that you go through in checking out the aircraft engine systems as well as the airframe systems.

As they ran the engine up, the engine backfired and produced large amounts of black smoke. In fact, one or two witnesses on the ground said that they saw the airplane going through this belching smoke and backfiring manuever for at least 15 to 30 minutes.

In spite of the problems obviously associated with the engine of that aircraft, the pilot elected to take off. He did not make it. The airplane barely made it off the runway, crashed, burned and before the rescue teams could get to the aircraft, all four occupants were very seriously injured.

When the NTSB went through the tear down of the engine to try to determine what caused the belching of smoke and the backfiring, they discovered in the air intake of the engine a large bird's nest. Many of the experts that we have hired to investigate this case have attributed most of the engine problem to that bird's nest, although that yet remains to be seen.

In spite of what was obviously a poor judgment error by the pilot, our company and eight other companies have been sued on a product liability litigation in that case.

That case was filed about a year ago. I have currently on my desk approximately 18 inches of paper associated with the case. We estimate the case is less than 10 percent complete and it has already cost us $20,000 out of pocket in addition to innumerable hours by our engineering and administrative staff.

In a second case, currently on our desks from our Rockford, Illinois facility, two young men missed a commercial flight late at night flying through New Jersey to the State of Georgia. Since one of the men was a pilot, they elected to rent an airplane and make the flight themselves.

They received a weather briefing prior to the flight. The briefing showed that their destination, the Georgia area, was completely shrouded in fog and that most airports were recording poor landing conditions.

In spite of that, they elected to take off. The plane traveled most of the distance to Georgia, and when they made contact with the FAA air traffic controllers in Georgia, they were reporting that they were low on fuel and were seeking a landing site.

The reports of their low fuel condition continued for at least 40 to 45 minutes. The last transmission from the pilot was, "I have

just run out of gas." The plane crashed. Both of the passengers in the airplane died in the crash.

After the crash, the engine was taken to a facility to run to attempt to see if there was an engine problem. The engine ran, although they discovered that one of our company's magnetos did not function properly.

When they took the magneto apart, they discovered a loose part; no wonder when an airplane hits the ground at a high rate of speed that there is a loose part.

In spite of what was obvious pilot error in getting into conditions that he should not have been in and misjudging his fuel, and in spite of the NTSB finding that the reason for the accident was a pilot judgment error and lack of fuel in the aircraft, our company was sued in a product liability action just under the statute of limitations for the states that were involved.

We were sued both in Illinois and New York. The claim was for $4 million and the theory was that our product obviously contributed to the accident.

Mr. OBERSTAR. Mr. Sontag, at that point we will have to—I hate to interrupt you, but, unfortunately, we do have a vote and we are winding down.

Mr. SONTAG. Thank you.

Mr. OBERSTAR. We will take a 15 minute recess.

[Recess.]

Mr. OBERSTAR. The Subcommittee will resume.

Mr. Sontag, you were half way through your testimony.

Mr. SONTAG. Thank you, Mr. Chairman.

Mr. OBERSTAR. We would you to continue.

Mr. SONTAG. I left off when we adjourned describing a couple of cases that happened to be active cases we have today.

I would like the committee to understand that this does not represent all of the law suits that we have been subjected to in the last 9 years of my tenure with the company. In fact, they only happen to be the two that are active today.

Over the last 9 years, we have been subjected to approximately 25 law suits of this type. And I might say, that of the 25 law suits that we have been subjected to, in my opinion, based on the facts and the evidence in all of the cases and all of the accidents, only one of those 25 cases is a case where there legitimately could be some concern about the implication of our product in the law suit itself.

The rest of them were settled or terminated in one way or another when we felt we had no liability.

I might, by the way, point out one more case that I think is also of interest and bears on the subject that we are talking about today, and that is the bill H.R. 1307.

This is a case that involves the flight of an airplane in the Hawaiian islands in the Pacific. A commercial pilot was flying a single engine Cessna airplane from the island of Maui to the main island. And the commercial pilot radioed somewhere off the coast of Molokai that he was losing altitude in the airplane and that he did not think that he would be able to make it to land.

He had his transponder on and so the Honolulu FAA station was able to track fairly well where he was located. When his radio

transmissions ended, they sent the Coast Guard to do a search. The Coast Guard searched for three days and after three days they found no body and no airplane.

In spite of the fact that there was no airplane or no body found, there was law suit brought on the theory of product liability against the manufacturer of the airframe, the propeller, the engine, ourselves as the producer of the magnetos, as well as two maintenance facilities.

The theory, of course, against us was that our magneto somehow contributed to a defect in the engine, which contributed to the demise of the pilot. Obviously there was no pilot, so it was very difficult to determine what actually did cause the accident.

When the information from the case was sorted out by our attorneys in the State of Hawaii, we discovered to our surprise that buried in the maintenance records was the fact that the magnetos had been changed on the airplane engine prior to the accident.

In fact, the engine contained the magnetos of our competitor. Nevertheless, we had been the suit for almost 2 months, expended about $10,000 in legal fees.

Now you might think that this is a great case to talk about a Rule 11 sanction action because in this case the plaintiff's attorney had in his possession the maintenance log books, which showed that our product was not on the engine.

He did not read the log books to make that determination before he willy nilly filed a suit against us. The problem in filing an action for sanctions against the plaintiff's attorney in this case revolved around the way that Rule 11 is enforced in the State of Hawaii.

On the advice of our attorney, we elected not to file an action for sanctions against the plaintiff's attorney because the probability of winning a Rule 11 action in the State of Hawaii was too low and it was going to require considerable time and expense on the part of our people to prove up the case.

This is the way the system works. We ask ourselves when we get in these cases, why are we in these cases? Why are we being sued? I understand what the law says. I understand the concept of strict liability, but I do not understand in fairness and equity, why in these cases where there is very clearly extenuating circumstances and where there has not been proved a case against our product that we can be brought into the suit and have to expend the kinds of time and effort we do.

When we get in a law suit, such as the ones that I talked about, it is not just a case of turning the suit over to your attorney and allowing him to operate the suit. It involves countless hours on the part of myself, our engineering department, our marketing department and others members of our administrative staff.

If you have ever been in a law suit, then you know what I am talking about. The countless requests for production of documents, the countless requests for answers to interrogatories and the depositions that are taken of your staff involve tremendous amounts of time and effort on the part of a company.

In our case, where you are a small manufacturer and you do not have the luxury of having extra staff to provide these services, the effects can be devastating.

For these reasons that we find product liability to be such a detrimental effect on our company, other companies are turning away from the general aviation market place.

As has been mentioned previously, substantial numbers of jobs have been lost. Foreign competitors have seen this as an opportunity to get into our market place and become important manufacturers of general aviation aircraft and components.

And we feel that something must be done about it. The industry at this point feels that when its product is at fault when our product is at fault, we want to step up to the plate to reach an equitable settlement. The problem we find is that very often we do not think that our product is at fault and neither does the National Transportation Safety Board.

Nevertheless, there is a cause for an action. I have been involved with this subject of product liability primarily because I feel that the system is inequitable. It is not right. It is not just. It is not fair. And it has a substantial negative effect on running businesses in the United States today.

I am an entrepreneur. I make my living on building companies. I make my living on providing jobs for a number of people in this country. And I find that in the general aviation market place the climate is so bad that there are not any other entrepreneurs like me or there are very few who are willing to take this kind of gamble. There are too many other industries out there where people can participate and not be subject to this kind of harassment and detrimental effects on the company.

I began talking on this subject back in 1985, when I was invited by the Committee on Science and Technology to talk about the state of product liability as it affects the industry today.

Shortly after my testimony, Congressman Glickman introduced H.R. 4142. The bill was almost identical to the bill that sits before you today. We did not have much time in that Congress to get things rolling, but the bill was reintroduced last year as H.R. 2238 in the 100th Congress.

By the time that we were done telling our stories, we had over 200 co-sponsors of the bill in the House of Representatives. In fact, a casual count of the Representatives who felt that they were sympathetic to our side, whether or not they were co-sponsors, showed that we probably had substantial votes to be able to carry the bill in the House of Representatives. It never made it to the floor.

This bill is unique. This bill has no caps on damages that many other bills have contained. It does not talk about limitations on attorneys' fees. It does not talk about limitations on punitive damages. We think it is a fair and equitable bill. In fact, our major opponents would also say the same in private.

We have some opponents to the bill, as I am sure you are aware. But as a matter of fact, there is only one opponent who has been consistently there against us and that is the American Trial Lawyers Association.

I am sorry they are not here today to represent their case because I always enjoy hearing a member of the American Trial Lawyers Association give his opinion on the state of this bill.

You must bear in mind, of course, that when you are listening to the American Trial Lawyers Association you are listening to a pro-

fessional speaker, a man who is trained to be an advocate, and naturally, when they put such an individual before you, they usually put somebody who can present rather a very eloquent case.

They always purport to represent the little guy and the innocent victim, and in many cases they do. Unfortunately, they have another agenda and it is the agenda of perpetuating a system today that we think has gotten out of hand.

You have to ask yourself just whose constituency do they represent. I can tell you that I firmly represent 100 people in the City of Rockford whose jobs are on the line as a result of the state of product liability in the general aviation market place and if we do not do something about the state of product liability as it exists today, those people may not have a job in the future, and as a result, I urge you to consider and pass this bill.

Thank you very much.

Mr. OBERSTAR. Thank you, Mr. Sontag.

Our final witness, Mr. Yodice.

Mr. YODICE. Mr. Chairman, members of the committee, with your permission, I would like to submit my written statement for the record.

I believe all the major points regarding this legislation have been presented. I think rather what I bring is a difference in perspective.

I am not here representing manufacturers. I am here essentially representing consumers. I represent the Aircraft Owners and Pilots Association, which is a non-profit association of some 285,000 aircraft owners and pilots and we estimate that our members own about two-thirds of the active general aviation fleet, and also, that we do about 70 percent of the flying.

Our views are not unique. AOPA is a member of a coalition and it is called the Coalition for General Aviation Liability Reform, and I am sure that the views that I am expressing today are also joined in by the other members, which include the Experimental Aircraft Association, the National Aeronautic Association, the National Business Aircraft Association, the National Agricultural Aviation Association, the National Air Transportation Association, and the Helicopter Association International.

And as consumers, Mr. Chairman and members, we have two competing interests in this product liability debate. On the one hand, we are very much concerned with a fair compensation system for our members. After all, if there are defective general aviation products and there are accidents, we are the victims of those accidents.

And so we have a very important interest in insuring that whatever compensation system there is, it is fair to our members.

On the other hand, we have a competing consideration, and that is for the availability of general aviation products at a reasonable cost. And as you have already heard, the cost of a general aviation product is significantly increased by the costs of product liability. And we have a very inefficient system.

Perhaps one point that I have not heard expressed today, is that of the amounts expended for product liability, very little reaches the ultimate victim.

I have heard varying estimates, but I have not heard a challenge to the figure of about 20 percent getting to the victim.

The rest of it is eaten up in the system so that there is an opportunity to reform the system and still preserve the compensation that ultimately gets to the victim.

I think too that this is what distinguishes us from the other so called consumer groups that have opposed this legislation. They do have the concern about compensation, but they seldom, if ever, evidence any concern about the consumer and the availability of general aviation products at reasonable costs.

There is one point that I think bears mention, and that has to do with the statute of repose. As a representative of consumers, we would like to see the statute of repose period be 20 years rather than 12 years. Twenty years is the figure which is in the Senate version of this bill. Twelve years is in this bill.

I will be happy to respond to any questions at an appropriate point. We just urge the committee to act favorably on this legislation.

Mr. OBERSTAR. Thank you very much, Mr. Yodice. And I thank all of the members of the panel for a very helpful and thoughtful testimony replete with specifics about how the industry has been affected by product liability cases that have gone, perhaps to extremes.

I cannot help wondering, Mr. Sontag, if one of those attorneys has ever thought of suing the bird that put the nest in the engine. [Laughter.]

Mr. SONTAG. Mr. Chairman, I was just reminded of that just a few minutes ago and somebody mentioned whether or not they had heard from the Audubon Society. So I am checking with our counsel right now. [Laughter.]

Mr. OBERSTAR. Those are, of course, examples that in law school, I am told, the professors say hard cases make bad law and those are hard cases and do make for tough situations that ultimately bring about an appeal for reform of the type that we are discussing here.

Ms. Vonflatern, who are your foreign manufacturer competitors in the field of—in the array of aircraft that Piper produces?

Ms. VONFLATERN. If we look at what our business really is now and the $150 million that I referenced as our recovery in progress. Two-thirds of that is coming out of sales of Cheyenne 3A's, which are used as trainers for airlines. And we have no foreign competitor in that market.

The other single engine, the litany, that was presented by Mr. Glickman and again by Mr. Stimpson, of foreign firms that are making single engine airplanes or thinking about getting into the single engine business are our competitors in that part of the market.

Mr. OBERSTAR. Single engine aircraft, and those would be competing largely with aircraft that are in use now and spread throughout the country.

Ms. VONFLATERN. That is right.

Mr. OBERSTAR. Now who are the manufacturers, and have they already begun any significant penetration of the domestic market place?

Mr. STIMPSON. I think, Mr. Chairman, if I may answer that, it is not what has happened today as much as tomorrow, also looking ahead here. Foreign manufacturers have seen this vacuum over here in the United States and they are saying, "Ah hah, here's a market." And if you look at Socata, it is already active here in the United States. Aerospatiale. They are establishing an assembly plant down in Texas.

You have announcements out of Germany between Grob and Rushmeyer and they are showing up more and more at the air shows and in the sales literature now.

You have heard the announcement recently that Sammi of Korea and Agusta were going together in a joint program for single engine airplanes. These are all single engine airplanes that I am talking about right now.

In upper side of the market, of course, in the turbo prop market, you have had Embraer and you have had Saab and you have had the Canadian de Havilland. In the business jet market, of course, we have competition from Israel and Great Britain and France and Canada.

So you know you almost have to segment it market by market. The most recent development we are seeing is right here in the piston lower end of the market, and this is where we have 90 percent domination over the years and we are losing this now.

And I think what we all are concerned about here, whether you are Piper, Mr. Sontag, or Mr. Yodice, is the future of our U.S. industry and we see what they are planning on the drawing boards for tomorrow and this is a changing situation.

Ms. VONFLATERN. There is also one other spin on that, which is that we at Piper have been approached with increasing frequency by organizations in India and China and by Embraer with suggestions that they would like to take over the manufacturer of our airplanes.

They have made very seductive proposals that they would like to just buy the technology, buy some engineering time and start making the Warriors, the Saratogas, the Senecas in Brazil or in China, or in India and put that to employment of their people and their governments are very much behind that every step of the way.

We are not inclined as a matter of principle to go that route, but it is attractive and it certainly is a vital alternative that at some point may have to be considered if changes are not made.

Mr. OBERSTAR. What I wanted to get at is foreign made aircraft in use in the United States that surely must have the same type of problems and might also been subject to law suits and whether you have any track record on parallelism with foreign aircraft.

Mr. STIMPSON. Well, I think part of the answer, Mr. Oberstar, is that the business jet market right now, for example, is like 35 to 40 percent is foreign manufactured coming into the country today. But that segment of the market has an excellent safety record. They are primarily flown by professional pilots. Corporate aviation last year had zero fatalities in the United States.

And the product liability problem has not been the same at the upper end of the line as it has been at the lower end of the line in the light single engine and twin engine market place.

You raise the question, how is this different? First, the foreign manufacturer does not have the large tail, and this is one, you know like a Piper or Cessna, they are not responsible for 125,000 airplanes out there.

Twenty years from now, if they are successful in this market place, they will have the same problem, but they do not have it today. Some of them have frankly said, "Well, you guys are going to get the product liability issue solved for us so things will all be different 10 to 15 years from now." And I said, "Well, do not be too sure about that." They are betting a little bit that things are going to improve, which may or may not be a true assumption.

The other thing is that the jury is still out, if you will, because we have not had a large penetration at the lower end of the line yet. There have not been a lot of if any law suits against some of the names that I mentioned.

Mr. OBERSTAR. So it is not possible to draw a distinction between foreign built aircraft and the product line that we are talking about, the under 20 seat aircraft, the lower end of the line, and the U.S. experience that is the subject of the pending legislation.

Mr. STIMPSON. At this time it is difficult. It is projections. It is a different problem. Twenty years from now, 15 maybe, you can.

Mr. OBERSTAR. Mr. Yodice, your testimony suggests that, and perhaps more—it states, I should say more than suggests, that you are balancing the interest of product user in product liability recovery against the cost of the aircraft. While one might expect that a product user, such as the group that you represent, would ordinarily want no restraints and be able to sue the deep pockets, that there is, regardless of the conditions and whose bird built a nest in the engine, that there is an alternative consideration on the part of your membership, and that is that the increasing law suits, the ten fold increase in liability law suits that you—or recoveries from $24 million to well over $200 million in about an 8 year period that was cited in your testimony will be passed on to the cost of new aircraft and that your membership is interested in keeping that cost down.

Is that a fair assessment of your testimony?

Mr. YODICE. Yes, Mr. Chairman, but it is not only cost, it is availability as well and you have heard now that there are some manufacturers who are getting out of the——

Mr. OBERSTAR. Cost and availability.

Mr. YODICE. Yes.

Mr. OBERSTAR. So your concern is two fold.

Mr, YODICE. And clearly the sentiment of our members are that there should be some balance. For certain, we want a fair compensation system.

Mr. OBERSTAR. Does your membership support this 12 year statute of repose period?

Mr. YODICE. We would prefer to see the 20 year statute of repose. Nevertheless, we support the legislation.

Mr. OBERSTAR. You support a limitation of some kind on the period of time, however, whether it is 12 or 20.

Mr. YODICE. That is correct, sir.

Mr. OBERSTAR. I am not clear about the relationship between liability for aircraft already sold and the cost of producing new aircraft.

There surely will be a liability cost for old aircraft regardless of whether new aircraft are sold. So the question I want to raise is, how does the liability for old aircraft enter into decisions on pricing new aircraft?

Ms. VONFLATERN. Well, from Piper's perspective—well, from anybody's perspective, it is just a matter of arithmetic. Obviously in 1989, you are going to have to buy insurance, which is going to be underwritten with an eye towards what the scope of your potential liability could be during that policy year. And so that is how the premium is set and the deductible figured, and that is how much money you are going to have to spend.

Now you are going to make airplanes that year. You are going to have to pay out of your operating costs for those premiums and defense costs. And for the example I gave was the last year that Piper carried insurance, it was $40 million. If you are only going to make 250 airplanes that year, you are in the red before the first rivet is driven and so the decision just simply not to go ahead and make the airplane, you are going to lose money on the airplane if you make it.

Mr. OBERSTAR. So you are saying then——

Ms. VONFLATERN. And every year you increase that burden because you turn out more airplanes and increase the universe that has to be insured.

Mr. OBERSTAR. Regardless of how safe and how well built and how much attune to the state of the art new aircraft may be, you are still carrying a liability for old aircraft in that the manufacturer has to factor into the cost of production of new aircraft its liability insurance or costs that may result from liability on old aircraft, pass that cost on to the production of new aircraft. Is that right?

Ms. VONFLATERN. That is right. I mean it is an operating expense that you have to figure in for the current year. What are my insurance premiums going to cost. And my insurance premiums are calculated on the number and age of the airplanes that are there flying. You would have to speak to an underwriter about how they come up with these figures, but we know what they look like consistently.

Mr. OBERSTAR. Well, I know from our previous hearings that there is virtually no relationship between experience and premium costs.

Ms. VONFLATERN. Except on extreme ends of the spectrum, that is certainly correct. As a matter of aviation insurance reality, of course, the overall experience of the market in a given year will impact it because it is the amount of dollars available and all of that.

But in terms of saying Piper aircraft has been, you know, a bad kid for the last 5 years and, therefore, we are going to penalize them in year 6, there is no correlation that a reasonable person can figure out.

Mr. OBERSTAR. We found that whether it was in transit or in trucking or in automobile operation, in our previous hearings we pretty well established that the insurance company is using a very different and certainly other factors than experience in determining what their premiums should be.

Mr. SONTAG. Mr. Chairman, if I might comment on that. This industry has much fewer underwriters, many fewer underwriters than they have in any other industry in the insurance business. In fact, there is less than 10 underwriters worldwide that write this kind of premium.

In fact, the premiums are set not on experience on the short range, but insurance over the long range. The companies are in the business to make a profit and eventually it has to even out.

From year to year, the premiums fluctuate primarily on the basis of capacity. I mean that has been our experience. It depends on who is writing insurance that year.

Approximately 3 years ago, we were down to 3 days before the expiration of our current aircraft product liability premium—our policy rather, and we only had one underwriter who was willing to take the risk because the market was very short then. And we had to buy it at whatever the cost was and it happened to be triple what we had paid the year before.

And so today, we find the market has loosened up, but it has not loosened up on the basis of our experience, but rather on capacity and I think you will find that throughout the insurance industry. It depends on who is willing to play the game.

Mr. OBERSTAR. Four days or three days is very good notice. We had testimony in our Investigations and Oversight hearings of truck operators who had been trying for 6 months to get their agents to come in and talk about premiums and reuping their insurance for the next year or whatever period it was, and 4 hours before midnight received a visit from their insurance agent and were given this exorbitant premium to pay in cash before midnight.

Mr. SONTAG. I certainly do not blame the problem on the insurance industry itself, though, because they have to make money over the long run or they will be out of business.

And I think the problem is that they do not view this risk the same way from year to year and so they price their premium different from year to year.

In some years their experience is so bad that they cannot take on additional underwriting risks. Aircraft product liability insurance is not a lucrative field for the insurance business and it represents less than 3 percent of all insurance premiums paid worldwide.

And as a result, when you deal with a very small market place, you deal with people who get into different circumstances from year to year and assess the risk differently. So the premiums change.

Mr. STIMPSON. And, of course, you know, we are different again here. You just heard the testimony from Piper, no insurance; Cessna, self insured for $100 million; Beech, self insured for the first $50 million or $60 million.

So you know the premium issue really with a lot of our companies is no longer the issue because they are all carrying these completely self insured or such high levels that the levels they have are just for a catastrophic levels at some higher amount.

So we are different again from any of the traditional things you may have heard in some of your testimony.

Mr. OBERSTAR. Thank you very much. I want to go on to other members.

The Chair recognizes the gentleman from Pennsylvania, Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

I thank the panel for your participation in the hearing and the testimony today.

I just have a few questions. Can anybody answer this statistical question as to the percentage of all general aviation accidents which involve aircraft more than 12 years old and then more than 20 years? Do we have a breakdown on that, Mr. Stimpson?

Mr. STIMPSON. Yes, I can supply that for the record. Briefly, if you were to take the 12 year statute of repose, it would be about 40 percent of the accidents would not be covered by that.

Mr. CLINGER. It would involve aircraft over 12 years of age?

Mr. STIMPSON. Yes, and I will be glad to give you a more detailed response for 12 and 20.

Mr. CLINGER. If you would.

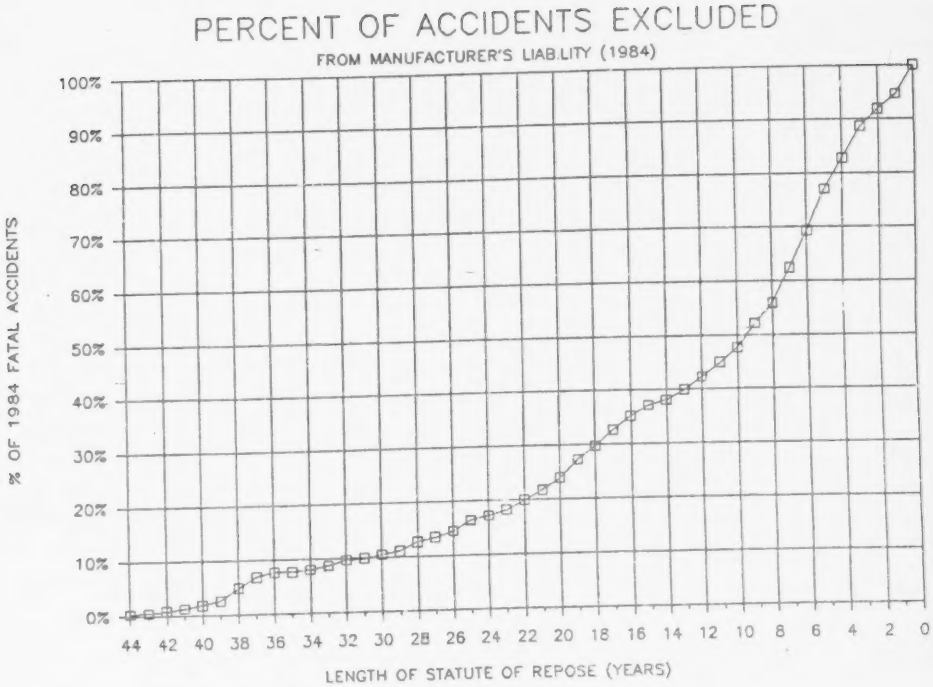
Mr. STIMPSON. Yes.

[The following was received from Mr. Stimpson:]

Question by Mr. Clinger. The percentage of fatal accidents involving general aviation airplanes that are more than 12 years and 20 years old.

Answer. According to data from the National Transportation Safety Board and the U.S. general aviation manufacturers for sample year 1984, roughly 43 percent of the general aviation fatal accidents involved aircraft that were 12 years or older. This percentage represents 233 of 543 total general aviation aircraft involved in fatal accidents that year. Roughly 24 percent, or 130 general aviation fatal accidents involved aircraft 20 years or older. (See graph below.)

However, many of these accidents were attributed to factors other than the age of the aircraft as seen by the fact that the NTSB cited pilot error as the broad cause/factor in 86.5 percent of the general aviation fatal accidents that year. NTSB cites pilot error as the broad cause/factor in over 85 percent of the cases in the following years as well.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LENGTH OF STATUTE OF REPOSE (YEARS)

Ms. VONFLATERN. I can give you Piper's very specific experience, which is as of today we have in active suit 60 product liability suits and of those, I believe it is 29 are on aircraft that are older than 12 years old, 11 are on aircraft that are older than 20 years old. And I do not know if that——

Mr. CLINGER. Twenty nine over 12 and 11 over 20 years old?

Ms. VONFLATERN. Right.

Mr. CLINGER. And how many altogether?

Ms. VONFLATERN. Sixty.

Mr. CLINGER. Sixty. So——

Ms. VONFLATERN. It is about half that are over 12 years.

Mr. CLINGER. About half would be less than 12 years of age.

Ms. VONFLATERN. That is right.

Mr. CLINGER. What about the percentage of the general aviation fleet, which is less than 12 years old? Can you provide that for the record?

Mr. STIMPSON. Yes, I will get that for you.

Mr. CLINGER. And less than 20 years old, as well.

Mr. STIMPSON. Yes.

Mr. CLINGER. I understand that certain aircraft have been singled out or sort of pilloried as being particularly hazardous or having certain safety flaws that should be addressed, including the Cessna 411, the Piper Cheyenne, the Beechcraft Bonanza, and the arguments are maybe that it would be unfair to exempt these aircraft from liability because many could be over 12 years of age.

But given the fact that they have had identified flaws, would it be fair to exempt them even though they were over whatever the statute of repose might require?

And, furthermore, it is argued that it would be unfair to create a defense that the aircraft complied with FAA regulations when built.

Does anybody want to respond to that argument?

Ms. VONFLATERN. Since you named a Piper, I feel like I have to respond.

Mr. CLINGER. I do not know whether you accept that characterization.

Ms. VONFLATERN. No, the Cheyenne 2 is the airplane that has gotten a——

Mr. CLINGER. A bad rap?

Ms. VONFLATERN. A bad rap, right. And since it has gotten that bad rap without ever having been tried to a verdict—I take that back. This past fall we had one case of a Cheyenne 2 that was actually put before a jury and there was a defense verdict. The bad rap comes out of a dispute about documents having been destroyed that pertained to that airplane, the merits of which obviously it is not appropriate to go into.

But the lesson we get from that, I think, is that the bad rap is often a function of legalisms and of outcomes that have nothing to do with anybody actually objectively examining the aircraft, whether or not there is a basis to exempt it.

I think that even a court of law would not indict the airplane in case B because court A reached a conclusion that it was responsible for an accident. In other words, there is just too many vagaries involved to make judgments.

So I think it would be unfair on the basis of that bad rap to exempt it, and also, unnecessary. There is as many fans. Superman flies a Cheyenne 2. I mean there is as many fans of those airplanes out there as there are detractors and you can line people up on both sides and say it is the greatest airplane that ever flew, and there are other people who would say it is a death machine.

Mr. CLINGER. Let us just make it a more generic question then and say that if you have a case where there is an aircraft that has had a substantiated record of flaws in it over a period of time, should that aircraft be exempted because it happened to be over 12 years old if there was a consistent pattern?

Ms. VONFLATERN. In my opinion, if there is such a consistent pattern, then the airplane should not be flying.

Mr. CLINGER. Okay.

Mr. STIMPSON. I would certainly agree with Ms. Vonflatern's statement there. If there is an aircraft with a consistent pattern, it is incumbent upon the FAA and the manufacturer to take action with or without the statute of repose.

In some of the aircraft you stated were the subject of the ATLA brochure again, and each of these sort of has its own little history and we would be glad to supply that information for you, again, on each of those.

Mr. CLINGER. There has been an argument made that in the salad days or the hey day of the 1970's that it was really more the high production rate of aircraft which led to flooding the market and that that led to a drop in sales in the 1980's because you saturated the market, and that was really more the cause of the present malaise in the general aviation industry than the liability crisis.

How would you, as a panel, respond to that?

Mr. SONTAG. I could respond to that. That might have been a valid argument in 1983, but we are almost 10 years after the salad days of the 1970's. And I think that most of the manufacturers would tell you today that the single biggest contributor to their not producing airplanes today is still product liability.

It is not a question of the number of units that were sold back in the 1970's anymore.

Mr. STIMPSON. And furthermore, we did not have the product liability in the 1970's that we have today. And it is a different environment. And we did not have the huge costs as you see from some of the data we have supplied to you today where these escalations have gone up so much and the product liability has sort of been the cancer that has been eating away, which differs us in the 1980's from the 1970's.

And if you would take one factor which is different in the 1980's and 1970's, product liability certainly stands out as the sore thumb among them.

Mr. SONTAG. I might say also that I am sure you can ask Mr. Yodice here that his membership have said over and over again they are willing to buy reasonably priced new airplanes. In fact, there is a huge demand out there. Every survey that we have seen said there are a number of people that would love to buy a small airplane reasonably priced.

Price has been one of the major detractors and the pricing has a lot to do with the cost of product liability on the airplanes sold today.

Mr. CLINGER. One final question, this bill would allow a manufacturer to raise the defense that the product was state of the art on the date of manufacture and that would constitute a defense to a suit for liability.

Wouldn't the ability to raise this defense take away from the manufacturer any incentive to attempt to improve the safety of its existing aircraft in order to avoid liability?

In other words, if you got the certification that you were state of the art, you could just forget about it and you would not have any incentive or any pressure on you to improve that situation.

Anybody want to take a crack at that?

Ms. VONFLATERN. Yes, I would like to.

First of all, there are a number of incentives which are more important to a responsible manufacturer than the courtroom to continue to make a safe product and to keep their owners healthy and flying and ready to buy another product and to protect the reputation of the aircraft. That is a fundamental tenant of future existence.

In addition to that, the bill does not eliminate a cause of action for a failure to warn. So, even if your aircraft was state of the art at the time that it was produced, if you subsequently discover a defect, or an air safety matter, you have a continuing responsibility both under the Federal Aviation Regulations and under the common law of most states to inform your owners about it.

And that process of service publications, whereby you keep track of your airplanes and keep track of who the registered owners are, would not be affected by this bill.

Mr. CLINGER. I thank the panel very much.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Mr. Skaggs, the gentleman from Colorado.

Mr. SKAGGS. Thank you, Mr. Chairman.

I am curious where the Trial Lawyers are today. Did they decline to participate?

Mr. OBERSTAR. They chose not to participate in the hearing. They were notified and they were contacted directly by staff inviting them to testify. It is not the first time. In our hearing on product liability issues in 1986, they chose not to testify before the Subcommittee on Investigations and Oversight.

Mr. SKAGGS. I just was curious about that. I wonder, also, whether or not we ought to put a section in the bill to limit law school enrollment as a long term solution to the flood of suits. [Laughter.]

Mr. SONTAG. You would have four supporters. [Laughter.]

Ms. VONFLATERN. Three.

Mr. STIMPSON. Two. [Laughter.]

Mr. SKAGGS. I also wanted to pursue some of the questions that the Chairman was posing earlier to understand how it is that this liability issue affects our international competitive situation.

Is it primarily the long tail of liability that has to be built into current pricing that the foreign competitors do not have to face? Is that—what part of the problem does that explain?

Mr. STIMPSON. Yes, there are several things. That is a large part of it, Mr. Skaggs. Another part is that in their own countries they are operating under an entire different standard of liability and you talk to some people from the UK or the European countries and they think we are completely nuts over here the way we handle these cases.

Mr. SKAGGS. I mean does that imply then a cross-subsidization of their lower liability, domestic or non-U.S. market that they can then underprice us in the U.S. market because they are not having to bear those costs elsewhere?

Mr. STIMPSON. Yes, in part and the other thing is that because a foreign manufacturer builds both for his own market and the export market. The U.S. market is included in that export market.

And their system is so entirely different in many of these countries that we are now seeing, for example, cases involving U.S. airplanes which have accidents overseas, those cases are coming back into the United States to be tried in the United States rather than to be tried overseas because our standard is much more liberal and much more advantageous to them.

So you have series of things, I think probably one of the most important is the one you point out. You also have the second one about bringing the case to the United States because that is a good place to have it.

The third is that, as you know, their standards of discovery, their standards of procedure are entirely different in many of these countries than they are here in the United States and go and try and sue Aerospatiale or one of the foreign manufacturers and go and try getting into their plants and see all of their engineering files and a lot of the other things that happen here in the United States to us is not happening overseas. It is a different environment.

But I would say that one of the major ones when it gets to the cost and the pricing is the one you point out of the tail.

Mr. SKAGGS. There has been a good deal of discussion about fairness in this and that is a word that hits all of our hot buttons I think.

Let me pose a hypothetical case, since we are—at least some of us are lawyers, in which we have a truly innocent victim and a 50/50 liability situation between, let us say, a manufacturer and a maintenance facility.

Does it make sense in that case to say that fairness has been served—and one of those, either the manufacturer or the maintenance facility, let us say is judgment proof for some reason and the manufacturer is looking at the entire liability exposure and it was an accident in which it truly can be said that but for the fault attributable to each of the wrongdoers, nothing would have gone wrong and you have got an innocent victim.

Is it fair, under our jurisprudence, for the victim to get compensated only 50 percent of his or her injuries under that circumstance?

Mr. SONTAG. I can answer that. That is sort of a loaded question because it is difficult to ever say that if the victim is not fully compensated that it is fair.

But on the other hand, is it fair for the manufacturer to bear the burden of a liability that the jury found him not liable for?

I know this is one of the subjects that you have talked about before and that we had a discussion on in the last hearing. And I think one of the considerations is that juries are not perfect and I realize that juries sometimes cannot apportion fault. And, therefore, that has created this idea of joint and several liability.

But by the same token, since juries are not perfect, sometimes they attribute liability where there is no liability. And, in fact, that is what has caused this problem of the deep pockets.

Mr. SKAGGS. I am well aware of that and I concede that issue. That is not the point I am making. But in the classic case where you have an injury that would not have occurred but for the equal contribution of two wrong parties—our jurisprudential history has been that if, unfortunately, one of those parties cannot contribute to making the victim whole, then it falls all to the other, as opposed to having someone who had nothing to do with being hurt, the victim, bearing 50 percent of the loss, again, positing the case that the accident would not have happened had not both of the wrongdoers contributed to it.

Ms. Vonflatern?

Ms. VONFLATERN. Yes. I have no problem with saying that it is fair that one pays for what one did and one pays no more. And if you are going to look at the larger social context of the innocent victim who, therefore, may walk away only halfway compensated, I think you have to enlarge the context to take in, in Piper's case, the 1,500 people and their families who are dependent on the continued viability of that company.

And to punish those people and the corporation simply because the other responsible person was not responsible enough to maintain the necessary insurance or assets or whatever to stand behind their work is unfair.

Mr. SKAGGS. Well, as between the two wrongdoers. And punish is also a loaded word in this context, as I am sure you realize.

Again, if we are looking at a case at which the accident would not have happened at all had it not been for both party A and party B doing something wrong and a jury looks at that and understandably says, "50/50," but there would have been no accident if the person that we are now saying will have to pay the whole freight had not done—had not contributed their part of the fault, at least do you recognize that reasonable people can disagree as to what is the fair outcome under this fact situation.

Ms. VONFLATERN. I certainly recognize that reasonable people can disagree. I have heard it all of my professional life. But I also have no trouble deciding which side we have to come down on for the greater good.

Mr. SKAGGS. You made the point that the party in my hypothetical that is not going to be responsible financially for their wrong doing is irresponsible.

What should we do about that? What is the role in dealing with this entire picture of requiring proof of financial responsibility on the part of persons engaged in owning, flying, making, repairing aircraft?

Ms. VONFLATERN. I think that is probably the subject of a whole other bill and a whole other hearing. I often think that the solution that many states have taken—and I am sure that Mr. Yodice at the other end of the table is not going to appreciate this particularly, but the solution that many states have taken with respect to automobile insurance and compulsory insurance and uninsured motorists funds, and this is off the top of my head, it is something we have thought about. One of the things that Piper is doing is looking into and is very close to consummating a deal by which we are able to offer new owners of Malibu aircraft, which happen to be a particular economic segment that we are concerned about or involved with, insurance at reduced rates.

We have just facilitated this with an established insurance company in exchange for which certain commitments are made by them with respect to recurrent training and recurrent and regular inspections of their aircraft.

Those rates are for large amounts of coverage, much larger than individual owners normally carry, which would leave a responsible pilot an operator.

I mean there are other ways than this bill. Nobody is pretending it is the whole solution. And for its own survival, Piper is among those who is trying to find other solutions. That is one. I mean we have got to somehow tie safety in to create an economic incentive among owners of airplanes and maintenance facilities and everything else to proper coverage.

Mr. SKAGGS. Mr. Yodice?

Mr. YODICE. Mr. Skaggs, I guess you can anticipate that we would be opposed to compulsory financial responsibility in the Federal legislation.

I think it is a little known fact that many states already have financial responsibility laws which related to aviation.

I think it is also a very little known fact that by and large the general aviation fleet is insured. The problem with having compulsory financial responsibility is that insurance in the amounts that would be required is not always available.

I think part of the problem that you raised with regard to joint and several liability is that the situation that you postulated is not the usual problem. The usual problem is that there is the operator of the aircraft versus the manufacturer, and the operator of the aircraft does have insurance, but insurance in modest amounts because that is what is available at reasonable costs.

And so the lawyers then are looking for the deep pocket, who is the manufacturer. And then it is in that context that your question really arises. If they are looking to the manufacturer because he has some responsibility, but a small part of the responsibility, and the larger part of the responsibility is on the operator of the aircraft, who has modest insurance, is it fair then to impose the burden on the manufacturer?

Mr. SKAGGS. Well, as I said, I concede that issue to you. What I am looking for in return is a recognition that at the other end of the spectrum where you have the classic innocent victim situation that that person should not be hung out to dry when other situation—or when the other factors pertain.

How much of this problem is attributable to the fact that operator liability insurance is either not present or present in such modest sums as to leave exposure that is then tried to be pinned on the manufacturers?

Mr. YODICE. Again, with respect to what is available for typical general aviation aircraft, you will find that the insurance companies frequently will try to hold the proceed limits down to about $50,000 or $100,000.

There is a great deal of pressure on the part of the operators of the aircraft, the aircraft owners and pilots to increase that.

If you can get it up to a million dollars, you are lucky. A half a million dollars is probably more available. Beyond that, it is probably prohibitively expensive.

Mr. SKAGGS. Well, then that leads to the next question because I do not see that we can make a nice separation between this part of the problem and the part that is now addressed in the bill, whether or not it is inappropriate if there is a federalized solution on the product liability side for all the reasons that justify a Federal approach there, why a Federal approach on the operator's insurance side is not equally warranted, and perhaps to go to a no fault kind of regime in which more of the dollars do get to the victims, in which the costs of litigation are held down, and your membership is able to get the kind of coverage that would make this all fit together a little better.

Mr. YODICE. Yes, I agree with everything you have said, including the fact that if we could get more insurance we would like to have more insurance.

The people who own and fly typical general aviation aircraft are usually relatively affluent members of their community and they are exposing all of their assets in the event that there is an accident. And so, they would like to have adequate insurance coverage. It is not generally available.

What is available—I should say on the other side of the picture too, the—I do not know that victims are not being fairly compensated, that by and large the big recoveries are recoveries that involve punitive damages, recoveries that involve large amounts for pain and suffering.

I think with respect to the economic losses—and perhaps Ms. Vonflatern can address this issue—with respect to the economic losses, by and large they are being compensated.

Ms. VONFLATERN. Yes, I think we would be in a wholly different position and probably would not be here today if purely totally compensating for economic loss was what the courts were doing.

We had a case last year in which a 22 year old man, who was single with no dependents, law suit was brought by his parents, to whom he had never given an ounce of support, and that was not disputed.

He had never made more than $23,000 a year in his life, but he aspired to be an airline pilot. And the jury was asked to consider punitive damages. They did not award punitive damages, they said. They said it was purely compensatory when they said that Piper should pay these parents $4.7 million. They called that compensatory.

Those are the things that we are looking at.

Mr. STIMPSON. I think that is the reason we are here today. The system has gotten to be unfair and we are all for fairness, but the balance has gone so far the other way, that we are trying to get some stability and some rationality back into the system, and this is really what Mr. Glickman's bill tries to address without going overboard too far the other way.

There were some very fine lines drawn when he drafted it of consulting with the consumers and others trying to reach what is fair. Obviously reasonable men will differ, but that was certainly the objective that he had and others in putting this bill together.

Mr. SKAGGS. And I appreciate that objective and share it. I believe there are one or two areas in which there are improvements that still could be made that would relieve any potential really for a—what would strike me as a truly unfair result and would address, as I understand, the data that you have, 90 percent plus of the real situation that you are trying to get at in which a manufacturer may be 5 or 10 or 15 percent liable and is being nailed or potentially is exposed for the entire verdict.

Mr. STIMPSON. I think the problem that we have with your proposition, as we discussed before last year, is that if you have a 35 or a 50 percent threshold, that sort of becomes a floor. It is an artificial sort of threshold you are putting into this on a joint and several

Mr. SKAGGS. I think the states' experience with comparative negligence refute that. That is the—those are figures that result in a mistrial, if they ever come before a jury. You do not load the dice in quite the way I think you are suggesting.

But, Mr. Chairman, I have taken probably too much time already. These are, I think, important if narrow points in this legislation that I would like to see us work on as we move to mark up.

Mr. OBERSTAR. I think they are all relevant questions and very important ones. I appreciate the gentleman raising them.

The gentleman from New York, Mr. Molinari.

Mr. MOLINARI. I have no questions, Mr. Chairman.

Mr. OBERSTAR. I have a few additional ones. Why is 12 years a fair period for a statute of repose, especially when you consider the average age of this type and model of aircraft is in the range of 20 years?

Mr. STIMPSON. Any statute of repose is obviously arbitrary. Most design defects are discovered in the early years, within the first 4 years of an airplane. I think 12 years was sort derived at, you double that and put some more on and 12 years was reached as sort of an arbitrary limit, which was again in our effort to be fair to all. It made sense.

The 20 years, over in the Senate side again, was another arbitrary figure. When the bill was marked up, some of the Senators there felt that 20 years was more reasonable to the victims and that was why it was arrived at.

As I say, any number is an arbitrary number, but the 12 was sort of looked at because most of the time you find these problems in the early years of the aircraft.

Mr. OBERSTAR. Do you have data supporting that contention?

Mr. STIMPSON. I will be glad to try and develop you further data on this, yes, sir.

[The following was received from Mr. Simpson:]

Question by Chairman Oberstar. The rationale that supports H.R. 1307's 12 year statute of repose.

Answer. An examination of Federal Aviation Administration airworthiness directives (ADs) issued to correct defects in some of the most popular models of airplanes from the 1950's, 1960's, and 1970's showed that 80 percent of the ADs were issued within four years of the date that the airplane received its original type certificate. Virtually all—95 percent—were issued within eight years. Using eight as a guide, a factor of 50 percent—four years—was added as a measure of safety to arrive at 12 years.

A review of state product liability laws showed that state statutes of repose vary from eight to 20 years. The statute chosen for H.R. 1307 falls well within the parameters of similar reform laws.

Mr. SKAGGS. Would the Chairman yield on that?

Mr. OBERSTAR. Yes.

Mr. SKAGGS. Mr. Stimpson, you may recall when we were doing the bill last time around, I believe it was the General Counsel for Beech that attempted to pull together a great deal of data at my request. I think a lot of it addressed these issues, and I am also fuzzy in my memory as to whether we ever got all of the data in that was being worked on at that time.

But I just wanted to remind Mr. Stimpson of that in hopes that we could update that and get it circulated.

Mr. SONTAG. Congressman, I have the transcript from that hearing the last time and I think on page 67 is the data that you requested.

Mr. SKAGGS. Well, there was further data pulled together than that. Some of it was requested to be kept confidential at the time, which I respect. I think it would be helpful if we could get all of that.

Mr. STIMPSON. I think that maybe an answer to your question, Mr. Oberstar, and at the request of Mr. Skaggs last year, we did considerable work and I think being responsive to most of your questions, if not all. There was some data you asked that was just sort of impossible to get at.

But Mr. Skaggs did ask this question, what was the effect of statute of repose. And in the case of Beech Aircraft, after 12 years, it would have eliminated 40 percent; 15 years it was 34 percent; and 18 years was 24 percent the accidents in the case of Beech would have been eliminated by that length of statute.

Mr. SKAGGS. Those would be a cumulative.

Mr. STIMPSON. Yes, right.

I do not think those numbers have differed.

Mr. OBERSTAR. That information would be helpful, but I want you to respond to the point that I raised because I think it is significant and it is one that has been raised in other context, and that is the issue of documenting the design defects appearing, as you said, the first 4 years or so.

Mr. STIMPSON. We can, I think, give you some detailed documentation on that for the record that would be helpful in stating how the 12 years was arrived at originally.

Mr. OBERSTAR. I think that would be very, very useful and very important, as would be—I would like your response to, instead of pegging the limitation to number of years on the assumption that there had been turnover, supposing some other standard were used

where parts had been substituted where some intervention in the design has occurred, supposing some standard of that nature were used to determine limitation on liability.

Ms. VONFLATERN. If I understand your question, there is already in the law a limitation on liability if someone comes on their supplemental type certificate modifies the airplane, Piper will not be held responsible for that modification if you change out a part from the factory and put another one in.

As a matter of law, when we get to the end of the litigation, we will not be held liable. We will, however, be sued. I mean what we are talking about here is avoiding the institution of suits from the start and the incurring of all of those costs up front.

The law does protect us from being sued for a part we did not make or a modification that we did not sponsor or design. But we are talking about preventing the law suit in the first place.

Mr. OBERSTAR. You are dealing with a number of broader issues.

Mr. STIMPSON. Mr. Chairman, in response to your question, this statute of repose in the bill is also unique in contrast to many other statutes in the fact that it is a rolling statute of repose. If it is a 12 year statute of repose and there is a new engine put in at year 11, that statute of repose on that engine starts then in that 11th year and continues on. It is not like a new engine would be cut off at year 12.

So that part or that engine would continue to be subject to whatever that statute of repose was in sort of a new life, if you will.

And I do not think most statute of reposes contain that feature. I think this is the first one we have seen, again, Mr. Glickman's ingenuity in designing this bill is an attempt to be fair and address this issue that a new engine put on at year 11 or whatever should still be under that statute.

Mr. OBERSTAR. That is helpful.

I think the issue that is most difficult to deal with and that is, what is going through the minds of juries in law suits—or lawyers rather and judges in these law suits on these types of cases are very, very vexing.

Somewhere along the line someone says there is an accident, maybe there is not adequate insurance for it. Maybe this aircraft was in fact altered in some way. But does the jury not at some point and the attorney for the victim, perhaps even the judge, ultimately say, "Well, someone has got to pay for this." Is that what is at stake here?

Mr. SONTAG. Mr. Oberstar, that is indeed the real crux of the thing. In fact, this goes back to Mr. Skaggs' point. When people get injured in the United States, whether it is through an airplane accident or it is a toy that causes injury or something else, and people are damaged as a result of the injury, somebody says, "Someone has to pay for it."

The problem is that there are not substantial resources in every case to pay for the injury. And the problems is that attorneys, unfortunately, who are out trying to defend their client, look for a source of income for recompense for that person who has been damaged.

My biggest problem with the law today, as I tried to say in my testimony, is not the results in the outcome when we get to the end

of these trials when we talk about apportionment of liability and so forth, but it is what the law does to allow people to bring the suit in the first place. Because the very threat of litigation is bad enough, but once you get into the litigation, you are stuck and you are on the hook for as long as they want to grill you and as long as they want to work on a case against you.

And I think that is the problem is that they are searching for someone to find to pay for the damage. And I have been in a number of law suits, in fact, probably most of the law suits that my company has been in where we have explored all of the technical evidence associated with our product and found there is no way there could logically be a case brought against our product, but we are in it sometimes as long as 5 or 6 years expending huge amounts of money and what we do to get out it is the very thing we should not be doing, and that is we pay a settlement fee and a settlement fee when in fact we truly believe it was not our product.

What that does is it provides the compensation the person is looking for in the first place. The real question that we are facing here is, if somebody is damaged, can we always afford in this society to pay for it? Does somebody always have to be at fault?

Mr. OBERSTAR. So there has emerged—and we saw this in the Investigations and Oversight Subcommittee hearings on the liability insurance crisis, that what this amounts to is a change in philosophy of law that—of tort law that a victim gets compensated only if there is a wrongdoer who is responsible. That is the historical theory. Now we are finding that there is compensation only if you can find someone who has got money to pay for it, not whether there is wrongdoing.

Mr. SONTAG. Congressman, I have had a challenge to attorneys from time to time and I have said, "Look, I will take any aviation accident that occurs, practically any one, you be the defense counsel and I am not a trained attorney, but I will be the plaintiff's counsel, and I will put together a convincing case with evidence that shows that a product was at fault. And I will argue that in front of an impartial group of people and we will determine whether or not they would apportion some fault to your product."

The problem is you can create a case against a manufacturer almost out of nothing and that is what I find the most perplexing thing about this litigation system, is that based on very limited evidence, in the first place, based on no evidence in some cases, a manufacturer can be brought into a law suit simply because his product was there.

That is wrong. That is not what our system is about. There should be some minimum standard in the first place before the litigation is brought. It is not and that is the problem. No one has to show, in at least some way prior to the suit being brought, that your product had a reasonable probability of causing that lawsuit.

Several attorneys have told me, all you need is 35 bucks and the right set of words and you have got yourself a case. It is true. It has happened to me 24 times and that is wrong. That is not what our American system of justice is supposed to be about, and that is my complaint.

That is why I have been here 4 years.

Mr. OBERSTAR. I see your point and you have made it very well.

I think the question will be raised, as it has in the past, that there has been a significant amount of reform of state product liability of the last several years. So, why then do we need to have Federal legislation if state tort law has been reformed?

Ms. VONFLATERN. There has been some reform. The fate of those reforms in various State Supreme Courts is uneven and right now we have a patchwork of laws that do not make a whole lot of sense and which more than anything, inspire a lot of forum shopping I think by plaintiff's attorneys.

But in the larger picture, I think that as an underwriting principle, certainly the fact that there are various states which if the accident occurs in them there are going to be different consequences, it is not going to be statistically significant to an underwriter who is trying to come up with insurance premium costs.

And in terms of the planning of a self-insured company like ours, it is not of much help any way. And, as I said, if you do not do business in all 50 States, or hope to do business in all 50 States, the accident happens in one, you are incorporated in another, your primary place of business is in a third, the plaintiff lives somewhere else, there is plenty of places for them to shop.

The fact that this is a Federal problem, a federally regulated industry begs for a Federal solution.

Mr. OBERSTAR. So you are really looking for uniformity on a national basis in tort reform and not comfortable with the numerous and varying state statutes.

Ms. VONFLATERN. Absolutely.

Mr. OBERSTAR. Are any aspects of the pending legislation already included in various state tort reform legislation?

Mr. SONTAG. Some states, Congressman, have gone beyond what we have in the statute. In fact, our statute is moderate relative to some states.

I might say that there has probably been over half of the States in the United States that have had some form of tort reform enacted, including the State of Washington, where I am sure you have realized just in the last one week they have overturned the law that was changed.

In those states that have had all of those changes in tort reform, there still is no major change as it relates to our industry. We still get sued with the same frequency and our liability problem is the same.

Mr. STIMPSON. None of these State bills have addressed the general aviation problem, per se. They have addressed the broader product liability problem, but none have looked at general aviation as a situation as this bill has.

And, again, as Jan said and you pointed out, it is the Federal regulation, which makes this industry different than most other industries that are being considered at the State level.

Mr. OBERSTAR. So, if this legislation is enacted, would you anticipate any significant increase in aircraft sales by U.S. manufacturers?

Ms. VONFLATERN. I would say that based on what our product liability load is right now, we would have half as many cases. We would, therefore, have to spend half as much engineering time and marketing time and customer service time on supporting litigation

and those resources would go directly into making more and safer airplanes, as would all the capital that is now being tied up.

As was pointed out, there is a market out there of people who want new airplanes. And if we could devote more of our resources to building new airplanes than refining airplanes, the sales could be made certainly.

Mr. OBERSTAR. What is there to support the view that Mr. Yodice expressed that in the wake of enactment of this legislation there would be lower priced aircraft as well?

Ms. VONFLATERN. Well, the airplanes would not have to carry the same amount of cost that they do. The portion of the operating budget that now goes into supporting our legal department would be considerably reduced and that would not have to be tagged on to the airplane. I mean that is the simple answer.

Also, general operating costs would go down. As I said, we have senior engineers, that are propulsion instruction engineers in particular, who have got 30 and 40 years in the business, who I would say spend two-thirds of their time supporting our litigation effort.

The inefficiency that this necessitates is tremendous and difficult to quantify. But all of it would go toward a more efficient operation, which is a cheaper operation, which produces cheaper airplanes.

Mr. STIMPSON. I do not think there is any question that you would see other manufacturers in this business, U.S. manufacturers. I think you would see parts people back. I think you would see new aircraft manufacturers; Cessna Aircraft, whose chairman has said, "Not until something is done about product liability will we manufacture another single engine airplane." He said that in public speeches.

I get calls all the time from other small new aircraft manufacturers, U.S. manufacturers that would like to go into the business. They go to their banks and their banks say, "Ha, ha. No, we are not going to do anything until you do something about this product liability."

If the Congress would enact this bill, I think over a period of time you would see significant positive, energized new movements in the general aviation industry.

And of all the things the Congress is thinking about doing, this is a no cost, low cost item on your part. You know so many other proposals you have up here for TV research and high communications and other things such as SDI, all cost you money. This is a nonbudget item and I think this bill would go a long ways in getting this industry really back going again.

Mr. OBERSTAR. Well, I think the point of parts suppliers is a very significant one and that was cited in Ms. Vonflatern's testimony. I think certainly the difficulty Piper has experienced in working with the parts suppliers in finding alternates for your current suppliers is very intimately tied to this issue.

In conjunction with that point, let me just raise what I think is the cornerstone of the opposition to your case, and that is the Trial Lawyers' assertion that, using the words of an officer of Cessna Aircraft Company, that there are a number of other factors that are more significant in the decline in general aviation sales.

I would dismiss one, low corporate profits. I think, why cite that, and then they are a by product of the decline in sales. But airline competition, air fares, limitation on access to terminals, training, and their rather vague assertion that there is an image of general aviation aircraft as unsafe and frivolous.

Mr. STIMPSON. Well, that speech was one that was made to a group of engineers by an engineer at Cessna and it was not a speech on product liability. And it is another example of how we think there has been a distortion by the opposition of this legislation.

We have never said that there are not other factors involved in the general aviation market place. We have had recession. We have had high interest rates in the early 1980's. We have had a lot of things. We have had foreign competition. But we have had those before too.

You look at the one big difference, what is different today than was 10 years ago or 15 years ago when the industry was also in recessions, and product liability is the big difference. And I think that this is a controlling, dominating force which has had a negative implant on particularly the lower end of the line at this point in time.

So, again, I would urge you to put that statement by the engineer at Cessna in the proper context, and I am sure he would be glad to give you a whole another speech on product liability, if that is what you wanted. But that was just one group of engineers he was talking to about the overall industry.

Mr. SONTAG. Mr. Oberstar, also, I might add that maybe 5, 6, 7 years ago it would have been true that there are other factors that may have been equally as important as product liability. There was an air traffic controller strike. There was an oil embargo and a consequent rise in the aviation fuel prices There were a number of other things going on, but today the singl thing that still survives as an impact negatively on our industry is product liability.

And every year in our Association, we poll our members to determine what the consider to be the most important things that are of consequence to the industry that need to be solved, and guess what has been number one consistently for what, the last 3 years? Product liability, the biggest negative impact on the industry.

The industry itself has said it over and over again. I mean it is clear that there are other factors. Certainly there are other things that occur in the impacting of business. All of these factors are interdependent. But clearly, in our judgment, the most important factor is product liability.

Mr. OBERSTAR. And you see a market out there for increased sales of aircraft either to existing aircraft owners who will trade up or trade for newer aircraft, or for growth in the market place? Is that right, Ms. Vonflatern?

Ms. VONFLATERN. Absolutely true. Everywhere we go we get the best wishes of everybody, including members of the Plaintiff's Bar who can afford to fly these airplanes, hoping that we will keep producing the airplanes. The number of people who come in and go on factory tours and walk around saying, "If only it was $10,000 less. If only, you know, you could keep the price under $100,000," and that is the potential market.

The actual market are the people who are lined up to buy the airplanes, which we cannot at the moment produce fast enough to satisfy them is there. I mean there is literally a line through 1990 for the Malibu, which is a half a million dollars.

For the lower end, the trainers, we have ~~a lot of~~ people who have it one their wish lists, that if we could bring the price down a little bit more we could sell them. We know that. We get that kind of a feedback all the time.

Mr. STIMPSON. You look at colleges and universities in this country where the flight training programs are booming right now because of the airline pilot shortages, the needs for pilots in the future, and these colleges would like to buy new airplanes and they are buying Piper Cadets. They would like to buy other airplanes.

The market in certain segments is very strong. And if we could produce the airplanes and help develop this market again, we think it would be even larger.

But we need to get back in production, and what is going to get us back in production on some of these airplanes, we have been talking about it today.

Mr. OBERSTAR. Thank you.

Mr. Hancock, the gentleman from Missouri?

Mr. HANCOCK. Thank you very much, Mr. Chairman.

Does anyone have an idea of how many light aircrafts are being imported into this country?

Mr. STIMPSON. Yes, we have those statistics. You have to almost look at it by market segment. If you are looking at the business jet market, it is a higher number, about 35 to 40 percent of the business jets sold in the United States today are foreign manufactured.

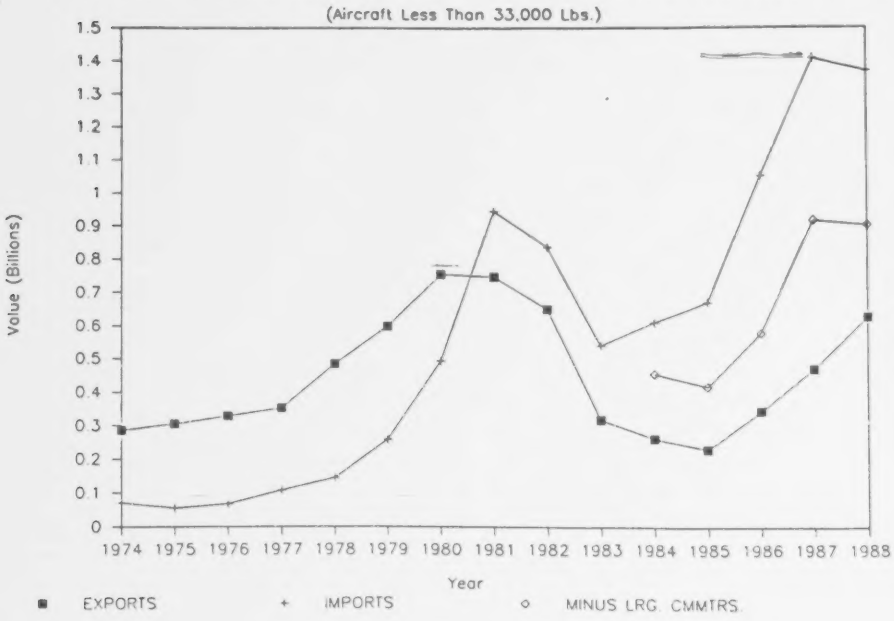
At the light end of the market, we have seen an increased of single engine airplanes coming in from France, for example.

However, what is more important is what is going to happen tomorrow because manufacturers from France, Germany, Korea, Italy have announced programs to start manufacturing for this market place and the challenge is going to be what is going to happen in 2 or 3 years and not what has happened last year.

[The following was received from Mr. Stimpson:]

Answer. Since 1981, the United States has carried a negative trade balance in general aviation. (See graph below.) In 1988, total general aviation imports were $903.7 million, while exports were valued at $626.8 million. Imported business jets accounted for 35 to 40 percent of total 1988 retail sales of business jets in the United States. As mentioned by Mr. Stimpson in testimony, single piston engine aircraft accounted for a relatively small amount of sales of foreign imports. However, it is significant to note that more countries are exporting single piston engine aircraft to the United States than ever before. Eight different countries exported single piston engine aircraft to the United States in 1988, up from three in 1897. Many of these have recently stated their intention to aggressively fill the void left by the U.S. manufacturers.

GENERAL AVIATION BALANCE OF TRADE



Mr. HANCOCK. But you do not have any idea of the actual number? I understand the French are bringing a four place——

Mr. STIMPSON. Yes——

Mr. HANCOCK. You do not have any idea of how many?

Mr. STIMPSON. Well, you know, 2 years ago they were bringing essentially zero airplanes. I think year before last they brought in over 100. I had a conversation with their representative here in the United States a few days ago, and they are looking at an increase this year in the number of airplanes, whether it is going to be 100 or 200, but even 100 out of 600 airplanes which we have produced this year of single engine airplanes, is a very significant number. That number is increasing.

Mr. OBERSTAR. If the gentleman would yield?

On that point, let me ask, these new aircraft coming in from France, as you said, or from any other foreign source, if we do not change the law will be subject to the same problems of product liability as domestic manufacturers are facing today, correct?

Mr. SONTAG. The difference though, Mr. Oberstar, is that these manufacturers for the most part have not sold airplanes here in the United States in the past in any numbers.

And as a result, they are not paying for the liability of that fleet that someone like Piper or Cessna is paying for.

Mr. OBERSTAR. But do they not have to factor into the price of the new aircraft anticipated costs of product liability lawsuits in the future?

Mr. SONTAG. Sure, they do. In fact, they all pay an insurance premium and that premium is based on what they think the lawsuits in the future will be.

The problem is they are not importing units in sufficient numbers to have a cost per unit shipped to the United States anywhere near what the cost is for product liability of Cessna or Beechcraft or Piper.

They are shipping very low units. It is a first bidder production. And as a result, the fleet that is in the United States, for which they have the product liability responsibility, carries a very low product liability insurance premium that in effect insures them against all those future losses.

Ms. VONFLATERN. The reality also is that for many of them their assets remain relatively difficult to reach. Suing them tends to be much more expensive. And, therefore, there is a disincentive built in for the plaintiff's attorney to pick on them if they can look elsewhere.

Those factors are there. And, also, for a number of governments that are looking in to getting into this business from our perspective, they are governmental owned entities who share the sovereign immunity of their governments. I mean there is a lot of factors that go into it.

Mr. OBERSTAR. Thank you.

Thank the gentleman for yielding.

Mr. HANCOCK. Another question, I understand that as a result of our lack of production there is a lot of light aircraft now being exported from this country which increases the cost and reduces the supply of available used aircraft. Am I correct on that statement?

Mr. STIMPSON. That is right, Mr. Hancock. The value of the dollar has been good for new aircraft production as well as exports. And a lot of used aircraft have gone overseas in the last few months.

From the standpoint of new aircraft production, over 30 percent of our new aircraft production last year was exported, and I would not be surprised to see those numbers for used airplanes in comparable if not larger numbers.

Ms. VONFLATERN. Seventy percent of our business is overseas.

Mr. HANCOCK. Is that right?

Ms. VONFLATERN. Yes.

Mr. HANCOCK. One of the areas that I know our armed forces are concerned about is the retention of our military trained pilots and the decline of the aviation schools throughout the country. What they estimate now to training the military aviation pilots is.

Mr. OBERSTAR. Five to seven million dollars.

Mr. HANCOCK. So this is another area that I think should be talked about from a national defense standpoint. Also, in the event of mobilization, which we had in 1941 it would not hurt anything to have a Ready Reserve of trained pilots.

One other thing and then I will turn it back to the Chairman. I would like to see someone come up with some estimates not necessarily of the job creation we are talking about by reactivating the light aircraft industry, or of job creation by manufacturers. I am talking about the peripheral jobs like the flight instructors, flight schools, facilities that would have to be built, and the A&E mechanics that would be employed even in the small communities.

I know down in my area that it is almost impossible to find a good qualified mechanic to make repairs. I think that it is part of our function as the United States Congress to try to create an atmosphere where the private sector can create jobs.

And I think there are some of us that seem to think that you can create jobs by taxing the private sector and hiring more Government employees, but I disagree with that.

This is one of the areas that I think your organization ought to try to address. The Chairman of the Committee and I had an opportunity to discuss this a few days ago, and I think this is a basic issue that is a lot bigger than just what we are looking at today, Mr. Chairman. I really appreciate your work on this.

Mr. OBERSTAR. Thank the gentleman for those comments and that may be a very appropriate point on which to conclude this hearing.

We thank the witnesses for their participation.

[Mr. Stimpson's, Ms. Vonflatern's, Mr. Sontag's, and Mr. Yadon's prepared statements follow:]

Good morning, Mr. Chairman and members of the Subcommittee. I am Edward W. Stimpson, President of the General Aviation Manufacturers Association which represents airframe, engine, avionics and other component manufacturers. Collectively, our membership accounts for 95 percent of the general aviation manufacturing activity within the United States.

After examining the devastating impact that product liability is having on the general aviation industry, the full Public Works Committee last year reported H.R. 2238, the General Aviation Standards Act of 1987. We deeply appreciate this action and hope the Committee will favorably report H.R. 1307 which is identical to the bill reported last year. This legislation is urgently needed for several reasons:

1. The vitality of U.S. general aviation manufacturers has been severely impaired. Unit deliveries have plummeted from over 17,000 in 1979 to 1,143 last year. The U.S. competitive position in the world marketplace is being threatened as foreign manufacturers make plans to fill this void.

2. Product liability costs remain the single largest cost element facing the producers of piston engine aircraft. The Cessna Aircraft Company, for example, for many years the world's leading producer of piston-powered airplanes, stopped producing them in 1986.

3. The U.S. general aviation fleet of approximately 220,000 aircraft is an aging fleet. The average age of a general aviation aircraft today is over 21 years.

4. Product liability situation in general aviation is not improving. Manufacturers are still responsible for the aging fleet even though planes may not have been properly maintained by owners and operators. Product liability costs have not abated. Judgments, verdicts, high defense and settlement costs all contribute to the current situation.

5. General aviation liability issue is not an insurance issue. Some general aviation companies are completely self-insured. Others are self-insured up to levels of $100 million. The current tort system is driving up costs, not rates or availability of insurance. In fact, some insurance rates are coming down due to increased capacity in the industry, but product liability costs are still the major problem.

6. H.R. 1307 has the support of every major general aviation consumer group and publication. These groups are concerned about the future of the industry. They want new products at reasonable costs.

7. This legislation has wide-based support in the Congress. In addition to considerable bipartisan support in the House, the Senate Commerce Committee has favorably reported similar legislation in both the 99th and 100th Congresses.

It is highly appropriate that the Subcommittee on Aviation take the lead in shaping general aviation liability reform legislation. As you know, the Federal government, through the FAA, regulates virtually every aspect of the general aviation industry. From design through production, operation, maintenance and even accident investigation, Federal rules apply. Importantly, questions

regarding these rules and regulations are often key elements in general aviation tort liability cases. A federal tort statute is a logical and necessary complement to such extensive regulation.

We have had an opportunity to testify on this issue before several Congressional Committees during the past few years. Our story has become quite well-known and the identical bill which this Committee reported last year earned the co-sponsorship of 210 of your House colleagues. 120 of them have co-sponsored H.R. 1307 to date, and we expect the number to grow as it did last year.

This apparently has triggered considerable concern within the Association of Trial Lawyers of America. Earlier this year they distributed on the Hill a 4-page brochure whose cover page boldly pronounces the following: "WARNING: The General Aviation Liability Bill is UNFAIR to Consumers and Victims." The brochure should offend those who know and understand the general aviation liability problem, and particularly those who are suffering from it. But it does a great disservice to those who do not fully understand the issue by distorting the facts. The ATLA brochure is a malicious attempt to undermine the legitimate efforts of an industry struggling for survival in the face of a tort system being exploited by a litigious society.

The brochure contains numerous allegations of aviation industry claims which are simply not true, and isolated or irresponsible quotations are cited out of context. Clearly the brochure is a self-serving compendium of distortions. It is an attempt -- without merit -- to discredit a bill that has beem carefully drafted, is well-justified and universally supported by the aviation consumers. We have made compromises to accomodate legitimate concerns and have even offered

further compromises to ATLA which they have refused to discuss. Mr. Chairman, we prepared a point-by-point rebuttal to the ATLA brochure which we would like to submit for the record.

It is important, I believe, to review the recent history of general aviation in this country. What was once a booming domestic manufacturing industry, accounting for over 17,000 unit deliveries in both 1978 and 1979, is now an industry that has suffered annual decreases in shipments. Last year we delivered only 1,143 airplanes.

A number of economic factors contributed to this decline in the early 1980's, but many factors, such as high interest rates and an economic recession, have disappeared. The one factor that persists is our industry's high product liability costs. In the past decade, the paid claims for judgments, settlements and defense jumped from $24 million to $210 million. These costs have grown despite the fact that the general aviation accident rate has shown steady improvement since 1946. In fact, according to National Transportation Safety Board data, 1988 was the best year in general aviation history.

This improving record is the result of a conscious and determined effort by the aviation community. The airplanes we build today are safer and better aircraft than the ones we built before. Manufacturers know that airplanes must have good safety records in order to sell. FAA standards continue to become more stringent as the availability and affordability of technological advancements are improved. Government, industry and user group efforts, directed at accident prevention, have shown that pilot education can reduce accidents, and have taken aggressive steps to improve education. All these factors, which collectively have reduced

the accident rate, have not reduced the manufacturer's product liability burden.

Historically, general aviation has played an important role in the international trade arena. Prior to 1981, the U.S. general aviation industry enjoyed a positive trade balance which contributed to our nation's trade surplus. Since 1981, the general aviation industry has had a negative trade balance, due in part to our growing product liability problem which is eroding our competitive position in several ways.

U.S. manufacturers are liable for their products under the U.S. tort system regardless of where harm might be incurred. In fact, we see cases being brought back to the United States when accidents have occurred in foreign countries. Foreign manufacturers are liable under U.S. laws only for their products which are operated in the United States. In most cases, this is a small percentage of their total in-service fleets which entail significant risk differentials from the American manufacturers. This disparity provides a competitive foreign cost advantage.

Another competitive factor is the number of aircraft for which a given manufacturer is responsible. As of December 31, 1986, there were over 195,000 active piston engine-powered aircraft in the U.S. About 98 percent of these are U.S.-built. This is an enormous and aging fleet for which our manufacturers remain liable in most states. Half of these airplanes are over 21 years old; one quarter are over 30. Our liability costs due to this huge liability "tail" far exceed those of our foreign competitors who have comparatively few aircraft in service, giving them a considerable competitive advantage.

Our manufacturers recognize their responsibility not only to build quality products but to stand behind those products as well. The rights of the consumer are a very legitimate concern, and H.R. 1307 was drafted with consumer interests in mind. The bill contains no caps on damages nor does it impose any constraints on the contingency fee system. What it does do, however, is place responsibility where it belongs -- with the culpable parties, and not necessarily on the shoulders of the manufacturer with the "deep pocket."

The aviation consumers who would be directly affected by this bill support it. Virtually every general aviation consumer group and trade publication supports and encourages passage of H.R. 1307. They recognize that changes to the system must be made if new airplanes are to be produced and parts are to be available at affordable prices. The Aircraft Owners and Pilots Association, the Experimental Aircrift Association, National Business Aircraft Association, Helicopter Association International, National Air Transportation Association, National Aeronautical Association and National Agricultural Aviation Association are among those groups.

HOW WOULD H.R. 1307 HELP?

1. H.R. 1307 would establish a uniform federal law and eliminate the forum shopping or the often difficult conflict of law choices that must be made today because the financial results of a case often depend on the state laws that are applied. Every aspect of general aviation activity, except tort litigation, is federally regulated. This bill would eliminate uncertainties, such as the following:

> "...The choice then, appears to be between Texas law and Georgia law. The choice is an important one given the differences between

Texas and Georgia law. For example, Georgia still follows the pecuniary loss rule in wrongful death cases, but apparently does not allow reductions for personal consumption expenses of the decedent. GA Code Ann. Sec. 105-1301(1). Texas law is opposite on both counts."

Ruth Henderson Moorhead, et al. v. Mitsubishi Aircraft International, Inc., et al. Lynda M. Hutchinson, et al. v. United States of America, et al. Rose Marie Baker McNeill, et al. v. Mitsubishi Aircraft International, Inc., et al. United States District Court, E.D. Texas, Marshall Division, Nos. M-81-127-CA, M-83-65-CA and M-83-140-CA, June 19, 1986, 639 F. Supp. 385. Section II. Liability; A. Conclusions of Law, paragraph 5.d., last sentence including the note.

2 H.R. 1307 would recognize the pilot's obligations and the need for careful maintenance and operation, particularly for older aircraft which, when coupled with FAA's rules requiring correction of defects and notification to pilots, would allow, without disadvantage to the public, a finite end to the manufacturer's liability for claimed defects after a reasonable period of time. Aircraft last an extraordinarily long time as evidenced by the fact that over one quarter of the general aviation fleet was built before 1958. H.R. 1307 would establish a fair and realistic time for the manufacturer to be responsible in tort actions for his product. The manufacturer would, of course, continue to be responsible under FAA regulations, for defect corrections and notifications to operators. The bill would not permit unreasonable cases such as the following:

"... On May 5, 1979, Paul Walter purchased a 1958 Cessna 195B airplane in Tampa, Florida. Walter, an experienced pilot, had been looking for this specific type of aircraft for some period of time. Prior to the sale, he flew the airplane several times and had a mechanic verify its airworthiness. He then took off from the airport and, moments later, the airplane crashed. Walter then asserted that Cessna was guilty of negligence because it had knowledge that failure to have quick drains added onto the plane would be dangerous, yet, nothing was done to warn of the plane's dangerous condition without the quick drains. ..."

Paul Walter and Jean Walter v. Cessna Aircraft Company, Wisconsin Court of Appeals, District II, No. 83-2065, October 24, 1984.

3. H.R. 1307 would establish true comparative fault. Aircraft manufacturers would continue to be responsible for their products, but they would not be responsible for actions beyond their control. Today, manufacturers are often forced to pay damages that exceed their degree of fault in an accident.

> "...In a previous, underlying cause of action for personal injuries arising out of a plane crash, a joint and several judgment was rendered against plaintiff Piper Aircraft Corporation, defendant Logan, and defendants Berz. We are asked to determine whether, in this action for contribution, plaintiff Piper Aircraft Corporation may recover of defendants Logan and Berz such amounts as it has paid to the injured persons, over and above its pro rata share...."
>
> Piper Aircraft Corporation v. Gerald M. Dumon, Administrator of the Estate of David W. Logan, deceased and Milton H. Berz, Jr., and Mary Jane Berz, Individually and d/b/a Berz Flying Service, Jointly and Severally. Michigan Supreme Court, No. 70006, Filed December 28, 1984, Released February 1, 1985.

CONCLUSION

In conclusion, Mr. Chairman, the general aviation industry is unique in the degree -- virtually 100 percent -- to which it is federally regulated. Only in tort litigation is it subject to the widely differing vagaries and varieties of state laws. A federal statute would inject some sense of stability, predictability and uniformity into this current amorphous system.

Our manufacturers have repeatedly said that they will continue to accept responsibility for their products; and H.R. 1307 (and FAA's regulations) would ensure that they do. It is fair to all concerned, and that is why it is supported by both the manufacturers and the users. It imposes neither caps on damages nor constraints on the contingency fee system, thereby making no change to the way our legal system operates. In short, H.R. 1307 places responsibility

where it belongs -- as determined by the court.

The product liability situation facing general aviation is very serious. Prompt action on this bill could be instrumental in helping resuscitate the U.S. general aviation industry and helping it regain the preeminent position it occupied just a few years ago. Failure to take such responsible action may well contribute to the death of a once thriving domestic industry.

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POINT-BY-POINT REBUTTAL TO ATLA BROCHURE

In March 1989, the Association of Trial Lawyers of America (ATLA) distributed a four-page brochure to members of Congress. The cover contains a sensational, bold mandate -- "WARNING: The General Aviation Liability Bill is UNFAIR to consumers and victims." The text constitutes a flagrant and disgraceful distortion of the truth supported by examples and statements taken out of context. In view of the many inaccuracies in the ATLA text, the following rebuttal is in order.

ATLA *"Industry claims to be suffering from an insurance crisis and has sought relief ... to limit its liability for the manufacture of defective aircraft."*

Reply The general aviation industry has never claimed an insurance crisis and has never attempted to limit its liability for defective aircraft. In fact, manufacturers have publicly expressed their commitment to satisfy any liability for defective products, and there are no caps in this bill. The industry does, however, seek relief from damages that a court of law determines are the fault of others.

ATLA *"Changing our legal system won't solve the insurance problem because the legal system didn't cause the insurance problem."*

Reply Runaway court judgments have driven premiums out of reach and forced several general aviation manufacturers to self-insure -- at least up to catastrophic levels. Product liability costs -- judgments, settlements and defense costs -- are now borne directly by the manufacturers and must be recovered through new aircraft sales. The legal system remains the cause; the insurance premium escalation an effect.

ATLA "Even in those states where 'tort reform' has been enacted, premiums continue to rise."

Reply Individual state reforms would have little effect on aviation insurance premiums since changes in premiums reflect national trends, not local actions.

ATLA The brochure brands as FICTION the implied industry claims that the "production and sales of general aviation aircraft have declined drastically in the past ten years because of increased liability costs and exorbitant damage awards." They assert that "the decline in sales is unrelated to the legal system. The reasons are many and varied, but the decline is not the result of lawsuits or insurance."

Reply Increased liability costs and exorbitant damage awards are the most significant among several causes of reduced sales. ATLA states the decline is not the result of lawsuits or insurance. However, the increase in industry product liability costs -- judgments, settlements and defense -- from $24 million to $210 million over the past decade has occurred despite an improving safety record. The tort system is unquestionably at fault.

ATLA A Cessna spokesman listed several factors contributing to the decline in aviation sales in an eleven-page paper, and product liability costs were mentioned in only one sentence.

Reply The fact that the Cessna spokesman mentioned product liability in only one sentence in an eleven-page paper means nothing; it is an engineering document.

ATLA Flight International magazine explained the drop in sales "because there are as many aeroplanes around as people want."

Reply Flight International has also written on numerous occasions about product liability's impact on airplane costs and the resultant drop in sales. Numerous publications have written about this industry's tort problems. In addressing the subject, The Economist offered, "Welcome to an industry killed by lawyers." (Attachment 1)

ATLA A GAMA spokesman said "... that we probably built too many aircraft in the late '70's..."

Reply GAMA has never said that product liability was the sole cause of declining sales, but the many planes built in the 1970's are causing part of the product liability problem today.

ATLA *The brochure identifies as FICTION statements that "this bill does not limit the rights of injured passengers or their families" and that "it is a modest and reasonable way to establish uniform liability." Moreover, they claim "the bill does limit the rights of passengers and pilots" barring "claims for compensation if the aircraft is over a certain number of years old ... If the manufacturer cannot stand behind its aircraft after 12 or 20 years, why is it safe enough for the American public to fly?"*

Reply The bill does not limit the rights of injured parties to seek redress; it does convey to the courts, however, the responsibility to determine the amount and extent of liability. Moreover, the bill recognizes that aircraft manufacturers should not be indefinitely held responsible for products that are operated, repaired, serviced and modified by other parties beyond the manufacturer's control. Manufacturers do stand behind their aircraft and send post-sales information regarding the safe use and care of the products to the owners -- for the life of the airplane. But there is no guarantee of consumer compliance, and no product will serve its owner forever without proper care.

ATLA *"By statute, FAA standards are minimum standards, allowing a significant degree of self-regulation by the industry. Congress should not further shield the industry ... but should instead focus on improving safety."*

Reply The trial lawyers repeatedly misquote FAA standards as being "minimum standards." In the law establishing the FAA and in all of the FAA regulations, the words "minimum standards" are always used with the qualifying words, "in the interest of safety" or "necessary for safety" -- a big difference. The FAA says that "such minimum standards provide an acceptable level of safety. The term 'minimum' apparently has been equated with the term 'minimal,' but that is not how the FAA views its mandate to prescribe standards." Finally, there is no industry self-regulation. None! While manufacturers may perform some tests autonomously, they must meet FAA regulations. FAA participates in some of this work, spot checks some, and reviews all certification data. The FAA retains final authority over airworthiness determinations. The term "self-regulation" is misused since the FAA is the final certification authority.

ATLA *"Why should the American consumer -- especially the innocent victims of defective aircraft -- pay the price for the poor judgement of a billion dollar industry?" ATLA says the industry claims it "needs this bill to survive and that thousands of jobs are at stake." They also add that industry deliveries increased by 40 percent in dollar volume in 1988 without special liability relief, and that they should build safer aircraft to avoid product liability lawsuits.*

Reply Innocent victims should not pay the price for defective aircraft; manufacturers should. However, manufacturers should not pay for defective maintenance, defective servicing or defective operation. The courts have the responsibility to assess damages, and the responsible parties should pay their determined share; a manufacturer should not have to pay a large share when only minimally responsible. The domestic general aviation industry is at risk -- both from the courts and foreign competitors -- and thousands of jobs have indeed been lost.

1988 unit delivery figures did show marginal improvement for the first time in a decade. What is not mentioned, however, is that the 1143 airplanes delivered in 1988 comprise only 6.5 percent of the 17,811 units delivered ten years earlier. Piston-powered planes, long the mainstay of training and personal flying, continue to be severely depressed in large part because of product liability costs. The dollar increase reflects the continuing demand for higher priced turbine-powered business aircraft. ATLA's suggestion to build safer aircraft decries NTSB statistics that reflect continuing improvement in general aviation safety despite an aging fleet, and the Board's findings that 84% of all accidents involve human error.

ATLA *The brochure cites "Examples of aircraft made safer as a result of lawsuits which may never have been brought if this bill had been law."*

Reply The problems with the Beech Bonanza V-tail stemmed from some aerodynamic characteristics that were unknown when the airplane was designed in the 1940's. Only after an extended Beech/FAA program were the original deficiencies identified and corrected. The aircraft was "made safer" as a result of this program, not the 1985 lawsuit.

The Cessna 411 is in fact able to fly on one engine, but it requires a trained, competent pilot. It does meet the FAA certification requirements and should not remain a liability of the manufacturer to cover operator incompetence. The plane crash ATLA notes resulted from evasive action the pilot had to take to avoid a mid-air collision --

not single-engine performance -- and he survived.

The allegation of defective seats in Cessna airplanes cites a jury-awarded punitive damages case as resulting in the seats being fixed. ATLA is wrong; the seats were not "fixed" because they were not defective. Cessna and the FAA agreed on proposed changes to inspection and adjustment instructions, but they were never directed. Why? The pilot community protested that any seat problems, particularly those cited in the punitive damage award, were the result of poor pilot judgement, not the manufacturer's design or instructions.

ATLA *"This is hardly the time to be removing a major incentive for building safe planes." ATLA reiterates its erroneous contention that product liability is simply not the cause of the industry's "insurance woes," and this bill will make it far more difficult for injured parties to be fairly compensated.*

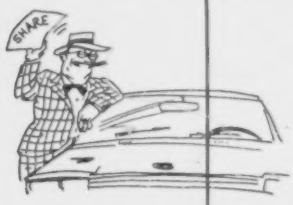
Reply The industry remains dedicated to building the safest airplanes possible, with or without this bill. This bill would, however, provide additional incentives to other potentially liable parties to provide better service, maintenance and operational competence because of their comparative liability. And the additional insurance coverage they will seek should make it even easier for injured parties to be fairly compensated. This bill would have a positive effect on general aviation safety and the entire user community. In fact, it would restore some long-needed fairness and responsibility to the general aviation tort system. That is why this legislation is supported by general aviation consumers, service organizations and manufacturers alike.

Selling cars

The middlemen strike back

SALESMEN are often the invisible men of business. In the American car industry, for example, the 20,000 car dealers are usually regarded as much less interesting to watch than the three big carmakers. But these middlemen are grasping for power in a $200-billion-a-year industry. A decision expected soon from Ford could shift it further in their direction.

Ford must judge whether to continue supplying Campbell Automotive group, a dealer in California, even if Campbell accepts an offer from a British car dealer, Lex, to take a 50% holding in Campbell. Lex is a publicly owned company. If Ford says yes, it



will be the first American car manufacturer to work with a dealer quoted on the stockmarket.

In order to retain influence over marketing matters, Detroit's carmakers have tried to insist on dealing with small, privately owned dealerships. They can do so no longer. Car showrooms are becoming concentrated into the hands of ever fewer dealers, who sell an ever wider range of makes. In 1980 there were 23,380 dealers selling American-made cars; at the end of 1987 there were 19,530. Average annual sales have jumped from $4m per dealer in 1976 to $11m last year. Dealer brokers, who act as middlemen in the buying and selling of sales outlets, say the average price of a dealership has doubled in the past five years.

One reason is the growth in imports. The bigger dealers have snapped up the franchises offered by Asian companies, and those imports have helped them become much more profitable. Last year, according to a Californian marketing consultancy, J.D. Power, the top six cars in terms of sales per dealership were all Japanese-in. South Korean. Ford and Chevrolet came seventh and eighth. As a result, the family company selling one make of car, once a feature of so many small towns, has given way to the multiple franchise dealer, selling many makes in more than one state. The biggest, Potamkin, has 40 dealerships in four states, and last year had a turnover of $856m. This, though, is still far below the £1 billion ($1.6 billion) worth of cars that Britain's Lex sold last year.

The power of the dealers is increasing because American carmakers have failed to predict public taste. Foreigners are making the cars Americans want to buy, while Detroit still too often produces lemons. When the Fiero, a downmarket sports car, was launched three years ago Detroit thought it looked like a big success for GM; last year its sales were less than half those in its first year; and this year GM stopped producing it. Such mistakes leave dealers with unsellable cars on their hands. GM would surely have been wise to have listened—and to have yielded more power—to its salesmen.

Light aircraft

Pulling out of a nose-dive

WICHITA

In little more than ten years, America's light-aircraft industry has shrunk to almost one-twentieth of its previous size. Survival now depends on being bold, ingenious and fit

NEAR Albuquerque, New Mexico, a pilot crashed his Piper aircraft into a van while taking off. The van had been parked across the runway by the airport's operator, who was in dispute with a film company that had hired the pilot. The pilot did not see the van because he had a big camera mounted in the front. He suffered severe brain damage. In court his lawyers argued that the aircraft's design was partly to blame; the jury agreed and in 1986 awarded the pilot $2.5m. Welcome to an industry killed by lawyers.

Horror stories like that abound in litigious America to explain the plight of its light-aircraft makers, a mixed bag of firms whose products range from small piston-engined aircraft to turboprop business aeroplanes to snazzy executive jets. According to America's General Aviation Manufacturing Association, deliveries dived from 17,811 aircraft in 1978 to 1,085 last year (see chart).

Part of the reason for the slump is that product-liability suits have dramatically increased costs, and therefore prices, particularly of piston-engined light aircraft which accounted for some 80% of the market in 1978. The average premium paid by the manufacturer to insure an aeroplane against product-liability claims has risen from $2,000 in 1972 to between $60,000 and $100,000 today—more than the cost of some aeroplanes. In 1986 Cessna, based in Wichita, Kansas, packed up making piston-engined aeroplanes.

The manufacturers would like to change the American legal system which permits such suits. The best they can hope for is a statute of limitations, which would limit how long they are responsible for their products. Bills pending in Congress offer between 12- and 20-year limits.

Product liability is not the only problem. The bits of the industry in which lawsuits are less important—especially business aircraft—have also suffered. Deliveries of turboprop aeroplanes numbered 263 last year compared with 918 in 1981; over the same period deliveries of executive jets fell from 389 to 122. As business aircraft are bigger and more costly, the price of product-liability insurance is, relatively, smaller. The manufacturers can also negotiate better insurance deals as the aircraft are usually flown by professional pilots (piston-engined light aircraft are used mainly for weekend pleasure flights, and some are flown by businessmen themselves).

Although product liability made things worse, the market was going into decline without it. Much of the demand in the mid-1970s had been fuelled by inflation. Price increases made aircraft a good investment, because they could be re-sold at a profit after delivery. Unlike cars, rapidly outdated by model changes, many aircraft designs have changed little since the 1950s and 1960s, and aircraft have useful lives of 20 years or more. So, in the disinflating 1980s, the market was saturated. It made more sense to buy one of the good models on the lively second-hand market rather than pay more for the same thing new.

The dive forced companies founded by pioneering pilots of the 1930s to change and to shrink. Cessna, for instance, had 16,000 employees in 1979; it now employs only

Source: General Aviation Manufacturing Association

ATCH 1

Knocking the nokyo

TOKYO

THE agricultural co-operative system, one of Japan's most powerful business organisations, has come under government scrutiny—and the government does not like what it sees. The system was established by the occupying Americans in 1947 to bring economies of scale to Japan's tiny farms. It has spawned more than 8,000 co-operatives, or *nokyo*, with 8m members. They control rice distribution and dominate the fertiliser and farm-machinery trades. They handle more savings and pension funds than any commercial bank or insurance company and have a bigger turnover than Nippon Telegraph & Telephone, Japan's biggest quoted company. Only the government is a bigger employer.

So it was brave of the government's Management and Co-ordination Agency to criticise the *nokyo*—especially since they are among the most powerful supporters of the ruling Liberal Democratic party. The agency's report says that the co-operatives have become bloated and are failing in their duty to give technical support to farmers, to promote bulk-purchases of farm supplies and to provide necessary credits.

The agency says that the co-operatives spend too much time looking for profits and juggling their assets in the financial markets. It found that they charge exorbitant fees for providing goods where their position as a near-monopoly provider is sustained by law—17% for farm supplies and 6.7% for fertilisers, tractors and other heavy agricultural machinery. The agency also found that people sent by the *nokyo* supposedly to give technical advice to farmers spend more time trying to sell them loans, insurance policies and other financial services.

Why is a government agency attacking one of the governing party's main supporters? Possible answer: it is part of an effort to reduce the influence of the farm lobby and so make it easier to liberalise agriculture. (The *nokyo* themselves get ¥700m—$5.6m—a year in government subsidies.)

The report, the first official study of the workings of the *nokyo*, was ordered by the prime minister, Mr Noboru Takeshita. He does little that is not spade-work for something else.

Unco-operative? Us?

3,600. Most firms now have new owners and have adopted different strategies to face the future. They all agree, though, that the falling value of the dollar makes export markets attractive. Just over 40% of production last year was exported.

The biggest gamble in the small-aircraft business is being taken by Piper, based in Vero Beach, Florida. It had stopped making piston-engined aircraft, but recently resumed manufacturing them and launched a new two-seater trainer called the Cadet. It has taken more than 100 orders for the aircraft, which sells for $45,000. But to price it that low Piper admits it is "not entirely self-insured"—meaning that it is not forking out insurance premiums.

Piper intends to mount what it calls a "more aggressive defence" if anyone tries to sue the company. This stand comes from Mr Stuart Millar, an entrepreneur and second-world-war pilot who took over the company in May 1987. Mr Millar, however, also inherited the company's liability for all the aircraft it built—even back to the 1930s.

Beechcraft, also based in Wichita and now a subsidiary of Raytheon, a diversified defence and electronics company, has stuck to high-performance and business aeroplanes, so far. It does, however, have lots of ideas, some secretly being put together by a subsidiary it acquired called Scaled Composites. This outfit runs a "skunk works" in Mojave, California, with Mr Burt Rotan retained as a consultant. He designed Voyager, the aircraft which flew non-stop around the world without refuelling.

Beechcraft is learning fast how to build aeroplanes in new ways using new materials. Its futuristic Starship, a business aircraft which will carry eight passengers, is built completely from composites. The aeroplane is put together like a plastic model kit, using parts that are stuck together. At a huge factory using 10,000 different moulds is the world's largest autoclave—a 25-foot diameter oven used to cure fuselage and wing sections. The parts are moulded, baked in the oven and joined without rivets. The only sound, joke the employees, is of glue drying.

The whole project has cost $300m but the company reckons the gamble is worth taking because one day all aircraft may be built this way. Indeed, Beechcraft has probably recovered its investment already. In January it announced a big order to build composite parts for a new military transport aeroplane, the C-17. The company reckons this contract may work out as its largest ever. Delivery of the first Starship is due in December. Each aircraft will cost $3.7m, and more than 50 have been ordered.

Cessna, now part of General Dynamics, another defence contractor, is also chasing military orders particularly with its Citation series of executive jets. And the company is on the verge of deciding whether or not to go back into the small-aircraft business. If it does, the aeroplanes will probably be based on its old models. It could manufacture them with an overseas partner, to reduce risks and costs. Cessna would probably sell its aircraft direct, rather than using dealers, with flight-training as part of the package.

Will there be a big enough market? More pilots have probably learnt to fly in a Cessna than any other aircraft. The company has built about 177,000 aeroplanes. One day they must wear out. The industry could yet make a comeback.

AOPA
"Pilots' eyes and climbing"
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NEWSNEWS

FOR IMMEDIATE RELEASE

AOPA SUPPORTS PRODUCT LIABILITY LEGISLATION

FREDERICK, MD--Legislation which would address the general aviation industry's product liability problems has been strongly endorsed by the 285,000-member Aircraft Owners and Pilots Association.

"Product liability costs have clearly helped stifle technological innovation in aviation," said AOPA President John L. Baker. "Aircraft and parts prices also have skyrocketed due in large part to liability concerns, and the entire aviation community has suffered--from the manufacturers to the pilots."

The AOPA president said his association wholeheartedly supports H.R. 1307, introduced by Rep. Dan Glickman (D-KS), and commended the Congressman for his leadership in addressing the product liability problem. "Representative Glickman has proven himself, time and again, to be a champion for the concerns of general aviation," said Baker. "Both he and Senator Nancy Kassebaum (R-KS) have worked tirelessly to get reasonable and effective legislation passed which would address the aviation industry's product liability problem."

According to Baker, H.R. 1307 would establish uniform standards of liability for manufacturers as a result of general aviation accidents. "While it is critically important that a fair compensation system for pilots and aircraft owners be maintained," said Baker, "the time is long overdue for sensible legislation which will allow technological innovation and the availability of safe aviation products at reasonable cost."

- AOPA -

March 16, 1989

Contact: Patricia E. Weil
(301)695-2156

STATEMENT OF

JAN K. VONFLATERN

GENERAL COUNSEL

PIPER AIRCRAFT CORPORATION

BEFORE

THE HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON AVIATION

MAY 24, 1989

My name is Jan K. VonFlatern, and I have the honor of being General Counsel of Piper Aircraft Corporation. I appreciate the opportunity to address the Committee today in support of H.R. 1307. I represent a company which, along with its 1500 workers and their families, has a direct and intense interest in the passage of this legislation.

Piper is a 52 year-old company whose special contributions to personal aviation are well known, even outside the flying community. Most Americans are familiar with the Piper Cub, the airplane, it has been said, that taught America to fly. In fact, in its long history, Piper has built more than 120,000 airplanes, ranging from the venerable Cubs to the multi-passenger, turbine-powered Cheyenne 1000. Today, 90,000 of those airplanes are still flying.

At one time, Piper Aircraft Corporation consisted of five manufacturing facilities, whose 5,000 employees built thousands of airplanes a year. Today, Piper's single plant, located in Vero Beach, Florida, employs 1,500 people and this calendar year those workers will produce 785 airplanes.

The important point to be understood about the numbers for 1989 is that two years ago they were much worse. In 1987, Piper was down to 800 employees and gave the world only 276 airplanes. The company was typical of an industry which was ranked by the Department of Commerce in 1986 as 211 out of 211 U.S. industries surveyed, in annual growth. Piper was the victim of several adverse economic events, chief among them, a tort system which had multiplied product liability costs several hundred fold over the previous ten years.

When Piper's current owner, Stuart Millar, bought the greatly diminished company -- for cash -- from its corporate parent in May, 1987, he did so with a determination to make it work again. And he has begun to accomplish that goal. The company he purchased in 1987 had $6 million in back orders; this year we will close out the year with $150,000,000 in outstanding orders. Piper is building

small, single engine Cadets to train the beginning pilot and specially configured Cheyennes to train airline pilots. The elegant Malibu Mirage is back ordered through 1990, and the reborn Supercub continues to sell to those who treasure the joys of simple fllying. Piper Aircraft is doing its level best to keep general aviation from disappearing from the American scene.

However, I am here today to tell you that the greatest single obstacle to Piper's recovery and to the survival of the small plane industry in this country remains product liability. There is no way that Piper, or any small company, can sell enough airplanes fast enough to outrun the American tort system if some of its ludicrous excesses are not curbed.

Insurance, even against the catastrophic case, is not economically feasible. For fiscal years 1985 and 1986, Piper's product liability costs, including insurance premiums, uninsured judgments and settlements, and defense costs, approached $40 million, or $90,000 per new airplane sold during those years. Information available to us indicates that today "coverage" -- if it can be called that -- even in what is universally called a soft insurance market, would be comparably priced. As a consequence, Piper is self-insured, currently carrying no insurance coverage whatsoever.

Even without the enormous expense of insurance premiums, our product liability costs are staggering. Piper pays approximately $250,000 every month to its own attorneys, and somehow absorbs the virtually immeasurable costs of engineering time required to support those lawyers. We have several senior engineers whose talents and decades of experience, rather than going toward the production of airplanes, are devoted week after week to litigation.

Further, the exponential increase in number and size of verdicts and settlements has driven hundreds of aviation component manufacturers out of the business, forcing Piper to replace vendor after vendor. Finding an alternative

supplier for an aircraft component, virtually every part of which is subject to stringent, certification-based standards, is expensive and time-consuming. In the past year, Piper has been forced to do this many times because of a vendor's fear of aviation product liability exposure. To do it on a single bolt costs $300; for a complex, custom-made component, such as a windscreen, the cost approaches $100,000. On an average, 378 work hours, or $12,000 is spent every time a vendor tells us he can no longer risk supplying a product for aviation application.

H.R. 1307 would not resolve the complex situation overnight. However, it would eliminate some of the more glaring injustices in the system.

For example, the bill would provide that a manufacturer would not be liable if an airworthiness directive had been issued pertaining to the accident-causing condition, and had not been complied with. An airworthiness directive, as I am sure all of you know, is issued by the F.A.A., addresses a matter of air safety and is absolutely mandatory. It is issued after consultation with manufacturers, as well as government experts, and normally after a notice and comment period. And yet it is often ignored. Occasionally, this disregard by the operator has the predictable result and an accident occurs -- whereupon the manufacturer, who, at least in Piper's case, notifies each and every registered owner of the A.D., is sued. I submit to you that this is unfair.

Another aspect of H.R. 1307 which represents a return to sanity is the repose provision, providing that an action will not lie against the manufacturer based on airframes or components which are more than 12 years old. Half of Piper's fleet, like those of our competitors, is older than 12 years. From actual experience, we know that by the time it reaches this age, a Piper airplane has had three different owners, two or three major overhauls, and dozens of maintenance procedures at facilities we may or may not know anything about. It

has been flown by an unknown number of pilots, at all skill levels, and has been hangared, flown and landed in climates and under conditions over which Piper ha no influence. It may have been modified by supplemental type certificates in ways Piper could never imagine.

Despite all of this, the manufacturer can expect to be sued for as long as the airplane flies, which in the case of a sturdy little Piper, is a long time. Because of this, the manufacturer must bear the cost, year after year, of ensuring every airplane it ever built. The burden is crippling and common sense should tell us it is excessive.

One other provision of this bill which I particularly commend to you is that eliminating joint and several liability. This aspect of the bill does no more than provide that a company such as Piper can be required to pay for what wrong it does -- no more, no less. It will eliminate the fundamentally unjust requirement that Piper pay for pilot error, if the pilot or his estate happens to be insolvent.

Piper does not wish to avoid responsibility for its product, and has no intention -- irrespective of the fate of any legislation -- of ever doing so. Despite the fact that our judicial system almost invariably allows it to be used against us, I am proud to say that Piper under Stuart Millar does not hesitate to tell our owners of any potentially unsafe condition we identify. Our accident investigators examine every crash for what it may tell us about the safety of an airplane, and not for what implications it might have in a courtroom. Piper is as committed to those loyal aviators who fly and lovingly maintain its older aircraft as it is to the affluent buyer of a shiny new Malibu, but we do not believe the system serves them any more than it does the company. This is because what we have in place today is a system in which a lawsuit may be brought againt the manufacturer of a 20 or 30-year-old airplane, based on alleged defects

which the F.A.A. and the manufacturer warned the operator to correct. Further, 100% of any damages can be collected against that manufacturer even if the accident is 95% attributable to the actions of a judgment-proof pilot. The system is unfair, unjust, and it nearly killed Piper Aircraft, among others. I hope the Public Works Committee will favorably report H.R. 1307, as you did H.R. 2238 last year, so that American leadership in the field of personal aviation will not be irretrievably lost.

STATEMENT OF

FREDERICK B. SONTAG

PRESIDENT
UNISON INDUSTRIES, INC.

BEFORE THE

AVIATION SUBCOMMITTEE OF THE

HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

May 24, 1989

My name is Rick Sontag. I am President of Unison Industries, with facilities in Rockford, Illinois, and Jacksonville, Florida. We employ 100 people in the manufacture of magneto and other ignition components for small piston engine airplanes. Magnetos supply the spark to run the engine of the plane. Chances are if you have flown in a small airplane, your plane's engine was kept running by our products.

I am also Chairman of the Product Liability Committee of the General Aviation Manufacturers Association (GAMA) which represents manufacturers of airframes, engines, avionics and other components. Collectively the membership of GAMA accounts for over 95 percent of the general aviation equipment manufactured in the United States today.

Mr. Chairman, I was privileged to testify before this Subcommittee two years ago. The subject was then, as it is now, general aviation product liability. Inasmuch as you are but one of several new members of this Committee, I welcome the opportunity to address the product liability issue. But first, a little background data.

General aviation plays a significant role in interstate commerce. It comprises an active fleet of 220,000 airplanes and services some 16,000 airports. This is compared to only 4,600 commercial carrier aircraft which service 850 airports. General aviation flies 36 million hours annually -- four times the hours flown by the airlines. In addition to the personal and business transportation role that general aviation plays, it also provides air ambulance services, aerial surveillance, law enforcement, overnight mail service, crop spraying and high speed jets for organ transplant missions. It also supplies

nearly all the aircraft used for basic pilot training throughout the world. It is in fact the backbone of our air transportation system.

Just a few years ago the United States general aviation industry was clearly the world leader. Today, that status is eroding rapidly. One of the key contributing factors is the continuing product liability crisis in general aviation.

In 1978 our industry delivered nearly 18,000 aircraft. In 1988, the industry sold only 1,143 planes. I know of no other industry that has been so devastated.

In the past, piston aircraft sales -- the familiar Beechcraft, Pipers, and Cessnas -- accounted for 90 percent of all units produced. Today, Cessna no longer manufactures any and Beech and Piper produce only a relatively few piston planes. Industry employment is down nearly 65 percent, and a once thriving industry is in danger of being lost forever.

A number of factors contributed to this decline, but many of these elements such as high interest rates, inflation and an overall economic recession have disappeared. The one factor that persists like a malignant cancer is our industry's product liability problem. Paid claims for judgments, settlements and defense amounted to $24 million in 1977. In the past decade, it has skyrocketed to $210 million. These costs have grown despite the fact that the general aviation accident rate has shown steady improvement since 1946.

It has often been said that the insurance industry is responsible for the

product liability crisis. Losses due to poor judgments by insurance companies a few years ago, it is claimed, are being recouped by exorbitant rate increases. Some people even believe that the product liability insurance crisis is over. Whatever may be the case with other industries, it is not true for general aviation.

The sharp increases in aircraft insurance premiums have been driven primarily by huge judgmenis, settlements and defense costs. As a result of the risk, some insurance underwriters will not write aircraft product liability policies at any level of premium. So today there are less than a dozen major underwriters of aircraft product liability insurance worldwide and most of those insurers are located outside of the United States. As a result, some general aviation manufacturers are self-insured, either totally or up to very high deductible levels.

The insurance cost problem cannot be fixed through repeal of the McCarren-Ferguson Act since aircraft product liability insurance is already exempt from its provisions. And any other legislative attempt to regulate the insurance premiums in aircraft product liability would have little effect on an industry which is heavily controlled by companies with no U.S. presence.

As the president of a small company who becomes personally involved in product liability cases, I can tell you that the main cause of the product liability crisis is not the insurance industry but rather the way that the product liability laws have become twisted and abused.

Let me give you some examples of what I am talking about and the effects

the problem has had on our company.

A 1977 Chicago incident involved three young men who crashed their airplane shortly after reporting engine difficulties. The plane struck an industrial building, killing one of the men, seriously injuring the others, and destroying the building. We and 17 other companies who manufactured components for the airplane were each sued for $23 million.

In four years of investigative work by the plaintiffs, the FAA and the NTSB, it was clearly shown that our product had absolutely nothing to do with the accident. In fact, the plaintiff's attorney told us privately that he had no case against us. Nevertheless, he refused to let us out of the lawsuit for over four years. He finally let us "buy our way out" by paying him $63,000 as a settlement. By then we owed our own attorneys over $55,000 -- a big bill for a small company. And a high price to pay for having no fault other than supplying a component for a plane which crashed.

In 1980, a young part-time employee of an aircraft training and maintenance facility mistakenly allowed a student pilot and his instructor to fly an airplane which was not supposed to be flown. The plane had had magneto problems and had not yet been serviced. On the takeoff, the plane crashed, killing the student and instructor. Due to that crash as well as years of similar operating problems, the City of New York closed down the training and maintenance facility. Our company was sued for $20 million in "lost profits" by the maintenance facility, who alleged that our magnetos caused the crash which in turn caused the company's demise. They also sued the City of New York and many others. Ultimately there were six different lawsuits and nine law firms involved. Using

the plane with known magneto problems was clearly the responsibility of the maintenance facility. Nevertheless, our company eventually paid $10,000 for our dismissal from the suits after four years and $46,000 in attorney's bills.

In another case in 1985, we were sued by a Kansas man for a 1983 injury he sustained while turning his plane's propeller by hand. After $5,000 in attorney's fees and two months' investigation, it turned out that he had our competitor's magnetos on his airplane -- not ours! In the one year since the accident, he hadn't even taken the time to read the labels on the magnetos before he sued. And his attorney added insult to injury by not agreeing to dismiss us from the suit voluntarily unless we agreed not to sue him for his mistake.

Unfortunately these kinds of abuses are commonplace in aviation product liability litigation because emotions and potential jury awards run extremely high when it comes to airplane accidents.

The impact of this litigation and threatened litigation on our company has been severe. As we have pointed out, the general aviation market is severely depressed, due in large part to product liability. Because of the drop in our business, our company employs less than 50 percent of the people we had in 1979.

We have also had other financial effects from the product liability crisis. For example, our product liability insurance cost has escalated from $100,000 to over $250,000. This in spite of our having a good claims record in the last several years. We cannot pass this premium increase on totally to our customers, and so our operating budget has to be reduced. Our employees end up paying for it!

The product liability problem has also stifled innovation at our company. A few years ago we scrapped an advanced electronic ignition project because we were afraid to pioneer such a liability risk. Today our company will only undertake technologically innovative aircraft product development if we have the sponsorship of a larger company. We cannot afford to take the liability risk alone.

Our product liability problems also makes it difficult to obtain suppliers, since most manufacturers will not take on the risk of making a product which goes on an airplane. In fact, due to the difficulty in obtaining suppliers, we have been forced to make most of our components ourselves -- often at higher cost.

The effects on our own small company are the same felt by most companies throughout the industry. The impact has been to drive a vital segment of our economy nearly out of existence. Before 1981 general aviation contributed to our country's health with a strong positive trade balance. Today the general aviation trade balance is negative. And foreign manufacturers, many of whom are subsidized and do not have to insure the huge fleets of airplanes that our old line producers -- Cessna, Piper, and Beech -- do, are lining up in numbers to assault our market even more vigorously.

And so the issue of product liability has become an issue of jobs, foreign trade and the competitiveness of the United States. We cannot let this industry slip away from us.

In my opinion, the only way to cure the product liability problem is to

fix the system of laws which have allowed the abuses to occur. I believe H.R. 1307 does this. It avoids the most controversial issues such as damage caps and limitations on attorneys' fees while focusing on the basic issues which are affecting our industry. And, as you will hear, it has the support of every major aviation consumer group affected by the bill.

As a small businessman I have sat by and watched many U.S. industries such as machine tools and semiconductors falter when actions by our government may have helped prevent it. General aviation is an industry which can be helped with action right now. And so I urge you to act swiftly on H.R. 1307, just as you favorably reported an identical bill -- H.R. 2238 -- in the last Congress.

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STATEMENT OF JOHN S. YODICE, GENERAL COUNSEL

AIRCRAFT OWNERS AND PILOTS ASSOCIATION

HEARING ON

H.R. 1307, GENERAL AVIATION
ACCIDENT LIABILITY STANDARDS ACT OF 1989

BEFORE THE

SUBCOMMITTEE ON AVIATION

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U. S. HOUSE OF REPRESENTATIVES

MAY 24, 1989

Mr. Chairman:

My name is John Yodice, and I am General Counsel to the Aircraft Owners and Pilots Association. We appreciate the opportunity to appear before you in support of H.R. 1307, the General Aviation Accident Liability Standards Act of 1989.

The Aircraft Owners and Pilots Association is a nationwide not-for-profit membership association of some 285,000 individual aircraft owners and pilots. We estimate that our members own approximately two-thirds of the active general aviation aircraft in the United States, and do seventy percent of the flying.

AOPA is essentially a consumer organization. Our members have interests on both sides of the product liability debate.

On the one hand, we are the probable victims of any air crashes which are due to defective general aviation products. As such, we have an interest in ensuring that there be a fair compensation system for our members who may be injured or damaged.

On the other hand, we have an interest in the availability, at reasonable cost, of general aviation products. It is apparent to us that many manufacturers and suppliers have curtailed production and others have gotten out of the general aviation business altogether, principally due to product liability concerns.

In 1988, there were only some 1,143 new aircraft sold in the United States. This is a drop from some 17,000 sold in 1979. At the same time, according to the manufacturers, product liability costs rose from $24 million in 1977 to $209 million in

1985. This year they expect the number of new aircraft sold to continue to decline, and the product liability costs to continue to increase.

We have heard much discussion about whether there really is a problem, and if so, who is to blame. There has been a good deal of finger-pointing: "avaricious plaintiffs' attorneys," "profit-hungary insurance companies," "uncaring manufacturers of lousy products," and the like. To the consumer, this finger-pointing exercise is irrelevant. If the manufacturers who perceive a problem and withdraw from the manufacture of aviation products, if new entrants are deterred from the market place because of a perceived problem, if insurance companies are unwilling to write coverages or must charge premiums too expensive for the manufacturers because of a perceived problem, then it is not important whether the problem is real. The perception is real. And the unavailability of aviation products is real.

With respect to costs, we have been made aware that our system for compensating victims is inefficient, giving the victim or his survivors very little of the money paid into the system. Most of the money is absorbed by the system in the costs of prosecution and defense. Since the consumers ultimately pay the cost of the system, to the extent that we can help make the system more efficient, we should benefit from lower prices.

It is this interest in cost and availability which distinguishes us from the other so-called "consumer groups,"

which include the broad based public interest groups and the organized plaintiffs' bar. We believe ours is the more balanced consumer perspective. These groups are interested in the broad subject of product liability and tort reform, but they evidence little, if any, concern about general aviation or its problems. Specifically, and importantly, they are never heard to complain of cost or availability of aviation products. We share their concern for the rights of victims. We regret their narrow focus on this concern to the complete derogation of the other concerns of general aviation consumers.

AOPA is not alone in its views. There are other aviation associations which, to varying extents, may properly be considered to represent the interest of consumers. There is the Experimental Aircraft Association, the National Aeronautic Association, the National Business Aircraft Association, the National Agricultural Aviation Association, the National Air Transportation Association, the Helicopter Association International. Each of these organizations, I believe, shares the views I am expressing to you. They, along with the General Aviation Manufacturers Association, have combined to form a Coalition for General Aviation Liability Reform to support the federal legislation such as H.R. 1307. They, too, distinguish themselves from the other consumer groups which have little concern for the health of the general aviation community, or the cost and availability of general aviation products.

In defining the interests of our members, we, of course, have relied heavily on the views of our members. The only dissenting views have been from some of our members who are plaintiffs' attorneys. But, in building on the views expressed by our members, we have acted as a catalyst in providing a forum for the expression of the views of all interested aviation segments. In April of 1986, AOPA conducted a product liability symposium which solicited these views. In May of 1987, AOPA conducted a parts availability seminar, which, though not specifically directed, quickly focused on product liability concerns as a root cause of the burgeoning parts problem.

The general consensus of these sessions seemed to be that it is appropriate to consider federal legislation confined only to general aviation. Federal legislation is appropriate because aviation is an activity which is already intensely regulated at the federal level with very little regulation at the local level. General aviation, at the federal level, is probably the most intensely regulated of any private activity in this country.

Every aircraft is certificated, maintained and operated to federal standards. Every pilot is trained, certificated and operates to federal standards. The federal government regulates the navigable airspace and operates the air traffic control system. The federal government investigates aircraft accidents, determines their causes, and makes safety recommendations based on these investigations. It's a short step to have federal law control liability arising out of general aviation accidents.

And, the consensus to confine the legislation to general aviation seemed to be because the prospects are better for such legislation than for more generalized tort reform.

In approaching reform, we as a consumer organization start with three premises. First, reform is happening and we need to be involved in it to be sure it does not become unreasonable, and that when all is said and done, our members will have a just and fair compensation system. Second, that we the consumers pay the product liability costs in the prices of the aviation products that we buy. And, third that the present system is inefficient, giving only a small portion of the amounts spent on product liability to the victims, leaving quite a bit of room for improvement.

So, we have become involved. We have attempted to work with the general aviation manufacutuers and others who are attempting this reform. It has been a good faith give-and-take effort. We are especially proud that this legislation does not seek to impose some of the more draconian reforms which have been considered, such as limitations on non-economic damages and punitive damages, restrictions on attorney's fees and the contingent fee system, and the like.

There is one provision to which we make exception. We would like to see the time limitation on liability to be 20 years as in the Senate version (S.640) rather than 12 years as in this Bill. We are confident that this can be worked out in Committee when we get to that stage.

Again, Mr. Chairman, we would like to thank the Subcommittee for the opportunity to appear here today in support of H.R. 1307. I will be happy to answer your questions.

Mr. OBERSTAR. We thank all of the members for having sat through this very long inquiry. And we will revisit the issue in mark up as soon as the Committee schedule permits.

The Subcommittee stands adjourned.

[Whereupon, at 1:05 p.m, the Subcommittee adjourned.]

WARNING:

THE GENERAL AVIATION LIABILITY BILL IS UNFAIR TO CONSUMERS AND VICTIMS

THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA

"General aviation" refers to aircraft holding under 20 passengers which is not operated on a regularly scheduled commercial basis. It includes most individually owned airplanes as well as many private charter and corporate aircraft. The industry claims to be suffering from an insurance crisis and has sought relief in the form of legislation to limit its liability for the manufacture of defective aircraft.

But changing our legal system won't solve the insurance problem because the legal system didn't cause the insurance problem! If insurance rates for the general aviation industry are rising because aircraft are involved in more accidents, then the answer is to build better airplanes. If legitimate claims have increased, then the answer again is to build better airplanes. If premiums have risen for other reasons, then blame must rest with the insurance industry.

General aviation is no different than any other entity that has faced huge premium increases during the past few years. Aircraft manufacturers are not the first to seek "tort reform" as a solution. But time and time again, even in those states where "tort reform" has been enacted, premiums continue to rise. "Tort reform" is not the answer, because lawsuits didn't cause the problem!

FICTION: Production and sales of general aviation aircraft have declined drastically in the past ten years because of increased liability insurance costs and exorbitant damage awards.

FACT: The decline in sales is unrelated to the legal system. The reasons are many and varied, but the decline is not the result of lawsuits or insurance. Don't take our word for it:

E.F. Krauss of Cessna Aircraft Company told the American Institute of Aeronautics and Astronautics that there were many factors contributing to the decline in general aviation sales. Among them were low corporate profits, stiff airline competition, low airfares, competition from other upscale options, growing government regulation limiting access to major terminals, complex airspace environment, expensive training, and the popular image of general aviation aircraft as unsafe and frivolous. Product liability costs received but one sentence in his 11-page paper.

Flight International magazine explained the drop in sales as follows: "They have fallen because there are as many aeroplanes around as people want. This is the cold reality."

The director of communications at the General Aviation Manufacturers Association wrote to the editor of Industry Digest that "It is a rather common opinion that we probably built too many aircraft in the late '70s in response to consumer demand, fed by speculation, especially speculation on interest rates and rising prices."

FICTION: This bill does not limit the rights of injured passengers or their families. It is a modest and reasonable way to establish uniform liability.

FACT: The bill does limit the rights of passengers and pilots. Among other things, it would bar claims for compensation if the aircraft is over a certain number of years old (12 years in one version of the bill, 20 in another). But aircraft are being sold and marketed as having a long useful life, and there is a healthy and vibrant market for used aircraft. No manufacturer tells its customers to stop using a plane after so many years. If the manufacturer cannot stand behind its aircraft after 12 years, or 20 years, why is it safe enough for the American public to fly?

By statute, FAA standards are minimum standards, allowing a significant degree of self-regulation by the industry. Congress should not further shield the industry from accountability by limiting its liability but should instead focus on improving safety.

FICTION: Trial lawyers are the only group opposing this bill. It is supported by actual "consumers" of the product involved, the aircraft owners themselves.

FACT: The Consumer Federation of America opposes this bill. Consumers Union opposes this bill. Public Citizen opposes this bill. US Pirg opposes this bill. These groups have stated that it would "make it exceedingly more difficult, if not impossible for innocent passengers and their families to receive adequate compensation for the horrendous injuries and deaths associated with general aviation air crashes."

EVEN PURPORTED BACKERS OF THE LEGISLATION CANDIDLY ADMIT THE MEASURE IS FLAWED AND WOULD NOT SOLVE THE MANUFACTURERS' INSURANCE PROBLEM.

John E. Baker, President of the Aircraft Owners and Pilots Association (AOPA) recently wrote: "I have very little sympathy for the straits the G.A. manufacturer finds himself in. Product liability judgments are not the cause of the new aircraft shortage in which we find ourselves. It is merely a symptom. The cause of the problem was clearly some unbelievably bad business decisions by the manufacturers 15 to 20 years ago which is compounded by some lousy products." (emphasis added)

Further, Mr. Baker states "If the industry was annually producing the twenty to twenty-five thousand quality products at an affordable price that the marketplace would absorb, then the per unit product liability insurance costs would not be significantly greater than they were in the mid-seventies!"

WHY SHOULD THE AMERICAN CONSUMER—ESPECIALLY THE INNOCENT VICTIMS OF DEFECTIVE AIRCRAFT—PAY THE PRICE FOR THE POOR JUDGMENT OF A BILLION DOLLAR INDUSTRY?

The industry says it needs this bill to survive and that thousands of jobs are at stake. But according to the Washington Post, the value of aircraft deliveries in 1988 increased by 40% to $1.9 billion. This occurred WITHOUT THE INDUSTRY OBTAINING THE SPECIAL LIABILITY RELIEF.

If the industry wants to avoid product liability lawsuits, there is a very simple way to do it: Build safer aircraft!

Noting frequent criticism of the industry by governmental agencies, the Congressional Research Service stated "There is, as a result, a feeling in some quarters that the industry's liability problem is a problem of its own making from which the government has no obligation to grant relief."

WARNING:
BEFORE YOU CONSIDER THIS BILL, MAKE SURE YOU KNOW WHAT IT DOES.

Last year, this measure was called a simple, modest, and noncontroversial solution to an industry's problems. But even the drafters of the bill testified they were not really certain what effect some its provisions would have.

Examples of aircraft made safer as a result of lawsuits which may never have been brought if this bill had been law:

- ☐ The Beechcraft Bonanza is a V-tailed airplane which had a propensity for breaking up in flight. It was always Beech's contention that it was the pilot's fault, even though as far back as 1956 there were memos showing that the problem was with the design of the tail. In 1985, a jury found liability and awarded money damages, sending a clear message to Beech to fix the V-tails. Only then were they fixed. The plane in that lawsuit was over 20 years old. Had this bill been law in 1985, Beech would have had an absolute defense. Perhaps the defective V-tails would still be in use.

- ☐ When one engine on a two-engine plane is lost, the airplane is still supposed to fly. Several Cessna 411s lost one engine and as a result were involved in crashes. In one case, Cessna tried to prove that the aircraft could in fact fly with one engine, conducted a test flight and it crashed. Aviation Consumer magazine recommended that the Cessna 411 be grounded. But even though this plane does not perform as certified, this bill would completely bar any claims against it because the aircraft is now approaching 20 years of age.

- ☐ Over a period of many years, pilots of some Cessna planes lost control of the plane when defective seats would slide at critical points of flight. Ultimately, a jury awarded punitive damages in a case involving this problem. It was not until that damage award that the seats were fixed. This bill, however, would limit the award of punitive damages. If it had been law, Cessna may never have gotten the jury's message.

WARNING:
WITH INCREASING CONCERN ABOUT THE SAFETY OF OUR SKIES, THIS IS HARDLY THE TIME TO BE REMOVING A MAJOR INCENTIVE FOR BUILDING SAFE PLANES.

The bill will not solve the industry's insurance woes because product liability is simply not the cause of the problem. It will, however, make it far more difficult for injured passengers, pilots and their families to be fairly compensated.

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